

## **Exhibit 2**

Page 1

1

2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555 (JMP)  
8 HOLDINGS, INC., et al., (Jointly Administered)

9

10 Debtors.

11 -----X

12

13 PARTIALLY HIGHLY CONFIDENTIAL

14 VIDEOTAPED DEPOSITION OF DANIEL McISAAC  
15 New York, New York

16 April 6, 2010

17 \* \* \* (Pages 12-23 have been designated highly  
18 confidential.)\* \* \*

19

20

21

22

23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 29428



Page 6	Page 7
1 D. McIsaac	1 D. McIsaac
2 Q. Have you ever been deposed before?	2 McIsaac, marked for identification, as of
3 A. No, I have not.	3 this date.)
4 Q. Okay. Just to go over a few kind of	4 Q. Exhibit 684 is a copy of the expert
5 ground rules that will help the day go a little	5 report that you submitted on exchange-traded
6 bit more smoothly. I'll try to ask my questions	6 derivatives issues; is that right?
7 clearly, and if you could allow me to finish a	7 A. Yes, it is.
8 question before you begin your answer, and I'll	8 Q. Okay. Do you have any opinions that
9 try to do the same for you so that Kathy can	9 you didn't express in this report that relate to
10 take down everything that we say more easily.	10 the issues --
11 A. Okay.	11 A. No, I don't believe so.
12 Q. If you can answer with verbal	12 Q. -- on exchange-traded derivatives?
13 responses as opposed to, you know, nods or	13 Okay.
14 anything like that, that will help things.	14 And what did you do today to prepare
15 A. As opposed to (nods)--	15 for your deposition?
16 Q. And if you need a break at any point,	16 A. I reread my reports, I spoke to the
17 please let me know and I'll try to accommodate	17 trustees, and did have a slight conversation
18 you as soon as we can wrap up whatever topic	18 with the financial advisors for the Trustee.
19 we're on. Okay?	19 Q. Okay. And what financial advisors?
20 If you don't understand any of my	20 A. Deloitte.
21 questions, please let me know and I'm happy to	21 Q. Okay. Anyone else that you spoke with
22 try to rephrase it for you.	22 in preparation?
23 Okay. I'm going to show you the first	23 A. No.
24 exhibit, 684.	24 Q. Okay. Did you review any documents in
25 (Exhibit 684, Expert Report of Daniel	25 preparation other than your report?
Page 8	Page 9
1 D. McIsaac	1 D. McIsaac
2 A. The reports and some of the	2 exchange-traded futures for approximately 20
3 information that I would have relied on for my	3 years. I worked closely with the regulators,
4 reports.	4 the FTC, CME, on the issues regarding that, as
5 Q. Do you remember any of the specific	5 well as the SEC on issues regarding the futures
6 documents that you reviewed?	6 business.
7 A. I just glanced at everything that was	7 I did some reviews of acquisitions
8 there or looked at whatever was in my reliance	8 that one of my firms worked for -- that I worked
9 material, would have been affidavits and the	9 for did as far as futures-related. As far as
10 like in his report.	10 options, I was responsible for the preparation
11 Q. Okay. When were you retained by the	11 of the reserve formula for 15c3 for
12 Trustee's counsel to provide expert testimony	12 approximately 20 years, worked closely with our
13 concerning exchange-traded derivatives issues?	13 people in the areas regarding margin
14 A. Sometime in February, I believe.	14 requirements at the OCC as they relate to the
15 Q. In February. Do you remember whether	15 firm and the impact on the firm's calculations,
16 it was -- so February would have been after Mr.	16 and was the liaison for my firms with the
17 Leitner submitted his expert report; is that	17 regulators, both the OCC, CME, SEC, on all
18 correct, to your knowledge?	18 financial matters.
19 A. I think it was, yes.	19 Q. Okay. The first thing that you
20 Q. Okay. Can you describe generally for	20 mentioned was segregated and secured reports.
21 me what your background is that qualifies you to	21 Can you describe those reports?
22 give expert testimony on exchange-traded	22 A. Yes, that's the customer protection
23 derivatives issues?	23 portion of the futures rules, CFTC, and it
24 A. I was responsible for the preparation	24 basically requires you or requires the firm to
25 of seg and secured reports for the	25 maintain all the customers' assets in a secure

Page 10	Page 11
1                   D. McIsaac 2 place with no liens on them.	1                   D. McIsaac 2 on reviews of acquisitions?
3                   Calculation is done every day. You 4 start out by reviewing what the -- you owe the 5 customers, your liabilities to the customers, 6 and then determine where the assets are. And 7 you do a report every day and make sure you're 8 in compliance with the rules.	3                   A. Uh-huh. 4                   Q. Can you -- and you said that was 5 futures-related acquisitions, I believe?
9                   Q. Okay. Is that similar to the reports 10 that are required under the SEC's rules?	6                   A. Yes. 7                   (Pages 12 through 22 have been 8 designated highly confidential and will 9 continue on the next page.)
11                  MR. OXFORD: Object to the form. 12                  A. Similar in some respects because 13 they're both required to protect customers. 14 Different from the fact that, futures world, all 15 of the assets that the customers give you should 16 be locked up from day one. They're supposed to 17 be sent into a seg. account and kept in 18 segregation at all times.	10 11 12 13 14 15 16 17 18
19                  The reserve requirement requires you 20 to do a calculation Mondays as of Friday based 21 on information that as of the close of business 22 Friday. So there is a difference in the way 23 it's done, but it has the same basic qualities 24 attached.	19 20 21 22 23 24
25                  Q. Okay. You mentioned that you worked	25
Page 12	Page 13
1                   HIGHLY CONFIDENTIAL - D. McISAAC	1                   HIGHLY CONFIDENTIAL - D. McISAAC
2                   Q. Can you describe how many acquisitions 3 did you review?	2                   Q. Uh-huh.
4                   A. When I was at        we acquired the 5 futures and options business of .	3                   A. And was responsible for the worldwide 4 implementation from the finance standpoint of 5 bringing them onto our books and records.
6                   MR. OXFORD: And Trish, if I can just 7 note for the record that, given some 8 confidentiality concerns about this 9 information, we would like for the moment to 10 designate this section of the testimony as 11 highly confidential.	6                   Q. When did this transaction take place?
12                  MS. BLOOMER: Absolutely.	7                   A. Dates are fuzzy. 2006, I believe.
13                  A. Just not sure what -- what's public 14 knowledge, what's not public knowledge.	8                   Maybe 2005.
15                  Q. Fair enough. Sure.	9                   Q. Okay. Were there any other 10 transactions that you -- or, acquisitions that 11 you reviewed?
16                  So, I'm sorry, I --	12                  A. We also at one point in time bought 13 the prime broker business of [REDACTED] also, 14 which included, you know, the options business 15 that they did for their customers, but it was 16 primarily a purchase of the customer business.
17                  A. We acquired the -- 18 futures business from . [REDACTED] futures 19 business. I worked on the due diligence. I 20 worked on the preparation of our bid, although I 21 didn't work on the financial information, more 22 of a review, quick review of the aspects of it, 23 how it would have impacted our firm. Worked on 24 the due diligence, supervised the due diligence 25 in some respects of our financial professionals.	17                  Q. Did it include proprietary options? 18                  A. No. No sense in buying proprietary 19 options. You book your own. 20                  Q. Any other transactions that you were 21 involved in reviewing? 22                  A. We also bought -- this goes a little 23 bit further back, a little bit more fuzzy on 24 it -- the capital markets business of 25 [REDACTED] which included their market-making

Page 14	Page 15
<p>1            HIGHLY CONFIDENTIAL - D. McISAAC  2 business in -- in equities and, in some  3 respects, options.</p> <p>4            Q. And that would have been an  5 acquisition of the proprietary portfolio as  6 opposed to a customer?</p> <p>7            A. It would have been an actual entity as  8 well as certain businesses that were bought into  9 a different entity. We bought a whole entity  10 that did some business as a clearer for some  11 prime brokers as well as trading for them,  12 market-making for them, and we bought in some  13 market-making information into the firm  14 separately.</p> <p>15            Q. Okay. Why is it that in that context  16 it made sense to buy proprietary positions  17 whereas it wouldn't make sense to buy them in  18 the case of the prime brokerage acquisitions?</p> <p>19            A. We bought a whole entity.</p> <p>20            MR. OXFORD: Objection to the form.  21            If you could just slow down a little a  22 little bit to make sure that Trish gets her  23 question finished before you answer and so  24 that I have an opportunity to object.</p> <p>25            THE WITNESS: Sorry about that.</p>	<p>1            HIGHLY CONFIDENTIAL - D. McISAAC  2 We bought a whole entity at the time.  3            Q. Which time?  4            A. With [REDACTED] So the  5 entity had proprietary -- might have had options  6 positions in it when we bought it.  7            Q. Okay. Do you know whether it had  8 options positions?  9            A. I don't remember if it did or not at  10 this point in time. It wouldn't have been a  11 significant portion of it.  12            Q. Do you remember the terms of the  13 acquisition of the proprietary book?  14            A. We bought the entity at a price, at a  15 bid price, and whatever the net asset value of  16 the entity would have been.  17            Q. What year was the [REDACTED]  18 transaction?  19            A. Maybe 2004, 2005.  20            Q. And the acquisition of the prime  21 brokerage business of [REDACTED] ?  22            A. I want to say around 2003, 2004,  23 somewhere around there.  24            Q. With respect to the [R] acquisition of  25 [REDACTED] in 2006, the first one that you</p>
<p style="text-align: center;">Page 16</p> <p>1            HIGHLY CONFIDENTIAL - D. McISAAC  2 testified about?</p> <p>3            A. Uh-huh.</p> <p>4            Q. How long did it take to negotiate that  5 deal from the day it was first conceived to the  6 day it closed?</p> <p>7            MR. OXFORD: Object to the form.  8            A. It probably took a couple of months.  9 I don't remember exactly.</p> <p>10            Q. And you said that you were involved in  11 the due diligence on that transaction?</p> <p>12            A. Yes.</p> <p>13            Q. Okay. Can you describe for me what  14 the due diligence consisted of?</p> <p>15            A. We reviewed the financial information  16 of their business, reviewed their models. I  17 didn't review the models per se to determine the  18 revenue streams. That was done by other groups.  19            I reviewed from a financial standpoint  20 and from a regulatory standpoint for both the  21 assets we were buying from one entity as well as  22 multiple other entities we were buying, I think  23 I want to say 13 or 14 different assets and/or  24 entities at -- purchased assets from different  25 companies and/or entities and reviewed that and</p>	<p>1            HIGHLY CONFIDENTIAL - D. McISAAC  2 directed our professionals that did a little bit  3 deeper dive on due diligence.  4            Q. Can you give me a sense of the  5 relative size of the business that was acquired  6 relative to the LBI transaction that you're  7 testifying about in this case?  8            A. Well, at the time of the acquisition,  9 I believe [R] , with what [R] had at the time,  10 made us probably [REDACTED] in the country.  11            Q. Okay. And in 2008 where did Lehman  12 Brothers' business rank?  13            MR. OXFORD: Object to the form.  14            A. I don't know exactly where it was. I  15 don't, looking at the numbers, I don't think it  16 was very high.  17            Q. You don't think it was very high.  18 Okay.  19            A. As far as, you know, seg and secured  20 accounts. Seg and secured balances, that's how  21 you usually rate it.  22            Q. Other than reviewing models, what else  23 did your due diligence consist of?  24            MR. OXFORD: Object to the form.  25 Misstates his testimony.</p>

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<p>1        HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2        You can answer.</p> <p>3        A. I didn't review the models. Somebody</p> <p>4        else reviewed the models. I reviewed the</p> <p>5        financial information, the regulatory aspects,</p> <p>6        the impact that it would have on the firm, the</p> <p>7        controls, the system they were using, they were</p> <p>8        using a different system, to make sure we were</p> <p>9        familiar with it.</p> <p>10       Q. Did you review the accounts, the</p> <p>11       customer accounts of the companies you were</p> <p>12       acquired?</p> <p>13       A. No, the businesspeople along with some</p> <p>14       of their professionals reviewed the actual</p> <p>15       customer accounts to determine which customers</p> <p>16       they may not -- they wanted to take and which</p> <p>17       customers they didn't want to take.</p> <p>18       Q. Do you know how long they spent</p> <p>19       conducting that exercise?</p> <p>20       A. I think a lot of it was done prior to</p> <p>21       the final bid as far as, you know, first blush,</p> <p>22       on the larger clients. They probably spent a</p> <p>23       little extra time on the smaller clients.</p> <p>24       Q. Okay. And when you say a little extra</p> <p>25       time, you said that the entire process took a</p>	<p>1        HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2        couple of months --</p> <p>3        A. Some of the customers -- I'm sorry.</p> <p>4        Q. That's okay.</p> <p>5        You said that the entire process took</p> <p>6        a couple of months. How long would you say was</p> <p>7        spent on analyzing the customer base?</p> <p>8        A. I don't know how much time in</p> <p>9        particular. The main review for the customer</p> <p>10       base was that they cleared for some market</p> <p>11       makers and it wasn't a business, I think, that</p> <p>12       we wanted to be in, so it was carving out which</p> <p>13       ones you wanted to take and which ones you</p> <p>14       didn't want to take.</p> <p>15       Q. Okay. Did you do a -- were you</p> <p>16       involved in any type of credit check of the</p> <p>17       customers that you were -- that were in the --</p> <p>18       A. No.</p> <p>19       Q. -- accounts? Okay.</p> <p>20       And did you say that the [R] - this</p> <p>21       first acquisition from 2006 that we discussed</p> <p>22       was an acquisition of just a customer business,</p> <p>23       or did it also include proprietary portfolio?</p> <p>24       A. It was just the customer business. We</p> <p>25       took over [R] proprietary business to clear it</p>
Page 20	Page 21
<p>1        HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2        for them, so we didn't buy the positions. They</p> <p>3        maintained the positions and we were the</p> <p>4        clearing agent for them.</p> <p>5        Q. Okay. Were there any other</p> <p>6        transactions other than the three that we</p> <p>7        discussed so far that you were involved in</p> <p>8        reviewing?</p> <p>9        A. Just along the way we did some mergers</p> <p>10       and I was involved in the [REDACTED]</p> <p>11       acquisition. I was involved in the merger we</p> <p>12       did with [R] but more for maintaining the</p> <p>13       regulatory atmosphere, making sure we were</p> <p>14       complying with that.</p> <p>15       Q. Did you have any role in negotiating</p> <p>16       the terms of any of those transactions?</p> <p>17       A. I -- we had a separate group that did</p> <p>18       the negotiation that determined how much to pay</p> <p>19       for them. I was consulted by them for various</p> <p>20       issues but didn't negotiate the price.</p> <p>21       Q. Do you have any experience with</p> <p>22       proprietary options or futures trading</p> <p>23       strategies?</p> <p>24       A. I ran the regulatory group at [R] for</p> <p>25       [R], so in doing the regulatory reports,</p>	<p>1        HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2        you had to understand what we were doing. As we</p> <p>3        went into a new business or a new process or new</p> <p>4        product, I had sign-off authority over it to</p> <p>5        make sure we were doing it accurately.</p> <p>6        Q. And what type of information would you</p> <p>7        require in that role about the trading strategy?</p> <p>8        MR. OXFORD: Object to the form.</p> <p>9        You can answer.</p> <p>10       A. We need to know what the desk was</p> <p>11       doing so that we could allocate it properly for</p> <p>12       capital purposes and for haircut purposes as</p> <p>13       well as to make sure we were producing it</p> <p>14       properly on our financial statements.</p> <p>15       At one point in time we started doing</p> <p>16       volatility trading and wanted to make sure that</p> <p>17       we had all the right information and that it was</p> <p>18       recorded properly, at the end of the day we had</p> <p>19       all the correct information.</p> <p>20       Q. Was there a particular name of the</p> <p>21       volatility trading positions that were acquired,</p> <p>22       do you know?</p> <p>23       A. No, we didn't acquire them. They were</p> <p>24       a new business that we instituted within the</p> <p>25       firm.</p>

Page 22	Page 23
1 HIGHLY CONFIDENTIAL - D. McISAAC 2 (The non-highly confidential portion 3 will continue on the next page.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	1 D. McIsaac 2 Q. Are you familiar with the term "VIX"? 3 A. VIX is a -- it's an index that's 4 traded over the -- I'm not sure if it's 5 over-the-counter or exchange-traded. I think 6 it's exchange-traded, but it's, if I remember 7 correctly, it's the volatility index of the 8 market. You're trading the volatility index. 9 Q. What's your understanding of the risk 10 profile of a VIX position in a volatile market? 11 MR. OXFORD: Object to the form. 12 Vague. 13 You can answer if you're able. 14 A. I'm not a risk man so I don't know. I 15 wouldn't venture to guess what the risk profile 16 is. We would normally use quants and people 17 like that to determine that information. 18 Q. Do you have an understanding of the 19 risk profile of any other types of 20 exchange-traded derivatives? 21 MR. OXFORD: Object to the form. 22 Vague. 23 A. Just from the standpoint of dealing 24 with them and understanding how the market 25 moves, not from a risk standpoint or a value at
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 24
1 D. McIsaac 2 risk standpoint. We would have other people 3 that were responsible for that. 4 Q. Is it fair to say that you're not an 5 expert on risk management in terms of 6 proprietary trading? 7 MR. OXFORD: Object to the form. 8 You can answer. 9 A. I'm not an expert on risk trading, on 10 risk management. Again, in our firms we would 11 have separate people that were responsible for 12 risk management processes and procedures. 13 Q. What types of risks would you be 14 knowledgeable about when analyzing an 15 exchange-traded derivatives acquisition? 16 A. Reputational risk, and, you know, if 17 we were taking on something, the impact it would 18 have on the firm's reputation; capital risk, 19 from a standpoint of how much capital would be 20 used and how it would impact the firm's capital 21 position; financial statement disclosure and 22 understanding that, and in general, the terms -- 23 general understanding of the business. So, in 24 such when we took over our futures and clearance 25 business, again, it's a customer-related	1 D. McIsaac 2 business, really not much risk involved. 3 Q. If there's not much risk involved, 4 what is -- why is it generally the case that a 5 transaction of this type would take two months 6 to negotiate? 7 MR. OXFORD: Object to the form. 8 A. It would take two months to finalize, 9 to set up the systems because you're going to 10 convert their information onto your systems, and 11 to, you know, finalize all the information you 12 need to finalize on it to do your due diligence 13 and to, you know, to finalize everything around 14 the purchase. 15 Q. And would that give you enough time to 16 analyze any problems with the books and records 17 of the selling entity? 18 MR. OXFORD: Object to the form. 19 You can answer. 20 A. It would, although, you know, your 21 first review would come up with anything 22 significant usually. 23 Q. Okay. And how long would the first 24 review take? 25 MR. OXFORD: Same objection.
	Page 25

<p style="text-align: right;">Page 26</p> <p>1                   D. McIsaac</p> <p>2   A. Sometimes it could take a weekend.</p> <p>3   Q. And what's the longest that it could</p> <p>4   take?</p> <p>5   A. It may be a couple weeks, possibly.</p> <p>6   It's according to what you're doing and how --</p> <p>7   what other things you have to do at that point</p> <p>8   in time.</p> <p>9   Q. One of the things that you mentioned</p> <p>10   when you were describing your general areas of</p> <p>11   expertise was margin requirements at the OCC.</p> <p>12   Can you describe for me what your background and</p> <p>13   familiarity is in that regard?</p> <p>14   A. Well, from the firm's financial</p> <p>15   standpoint, you know, we needed to know what the</p> <p>16   margin requirements were, how they impacted the</p> <p>17   customer reserve formula, how they impacted the</p> <p>18   firm in general to know what margin was being</p> <p>19   called; the rules and regulations of the OCC,</p> <p>20   how it impacts additional margin requirements at</p> <p>21   points in time for firms, an understanding of</p> <p>22   that. I worked for a firm that was -- I don't</p> <p>23   think it's a secret -- was having some financial</p> <p>24   difficulties, so we did have a lot of</p> <p>25   conversations with the regulators over the</p>	<p style="text-align: right;">Page 27</p> <p>1                   D. McIsaac</p> <p>2   margin requirements.</p> <p>3   Q. Okay. Can you describe generally what</p> <p>4   the problems were with the firm that you just</p> <p>5   described?</p> <p>6   A. We lost a lot of money. UBS lost a</p> <p>7   lot of money.</p> <p>8   Q. Lost a lot of money on what?</p> <p>9   A. On various trading strategies.</p> <p>10   Q. Would that include their trading</p> <p>11   strategies at the OCC?</p> <p>12   A. I do not believe so.</p> <p>13   Q. Okay. What was the context of your</p> <p>14   involvement with the OCC?</p> <p>15   A. As a regulator, a regulated entity, as</p> <p>16   our clearing org., they had a concern on our</p> <p>17   capital position and our ability to fulfill our</p> <p>18   obligations to it. I interfaced with them to</p> <p>19   keep abreast of what the firm was doing, how we</p> <p>20   were doing, and what we were -- what we were</p> <p>21   taking to maintain our capital base and keep</p> <p>22   them comfortable from a financial perspective.</p> <p>23   Q. Were you able to keep them</p> <p>24   comfortable?</p> <p>25   A. I believe so.</p>
<p style="text-align: right;">Page 28</p> <p>1                   D. McIsaac</p> <p>2   Q. Did they ever threaten to liquidate</p> <p>3   the account?</p> <p>4   A. Not to my knowledge.</p> <p>5   Q. Did they ever increase the margin</p> <p>6   requirements because of the financial situation</p> <p>7   of the company?</p> <p>8   MR. OXFORD: Object to the form.</p> <p>9   A. As long as this is confidential, yes.</p> <p>10   Q. Do you know the extent to which they</p> <p>11   did that?</p> <p>12   A. 30 percent requirement, additional</p> <p>13   requirement. I think it was called Phase 3 or</p> <p>14   Level 3.</p> <p>15   Q. Did they ever refuse to allow the</p> <p>16   company to withdraw excess that happened to be</p> <p>17   in an account on any given day?</p> <p>18   MR. OXFORD: Object to the form.</p> <p>19   A. Not that I'm aware of.</p> <p>20   Q. Did you deal with the OCC in this</p> <p>21   regard with respect to customer accounts, firm</p> <p>22   or market maker accounts, or both?</p> <p>23   A. It was the overall relationship we had</p> <p>24   with the OCC.</p> <p>25   Q. So they were both?</p>	<p style="text-align: right;">Page 29</p> <p>1                   D. McIsaac</p> <p>2   A. So it was firm and customer.</p> <p>3   Q. Do you have an understanding of what</p> <p>4   the OCC's rights are vis-a-vis clearing members</p> <p>5   when they have insecurities about</p> <p>6   creditworthiness?</p> <p>7   MR. OXFORD: Object to the form.</p> <p>8   A. I understand I think they have four</p> <p>9   levels for firms. Level 1 being no concerns; I</p> <p>10   believe their Level 2 is an alert status, where</p> <p>11   they pay a little bit more attention to how the</p> <p>12   firm is doing; Level 3 is where they raise the</p> <p>13   margin requirements by 30 percent; and I believe</p> <p>14   Level 4 is even more severe, where they raise it</p> <p>15   to 50 percent.</p> <p>16   Q. At what level do they start</p> <p>17   threatening to liquidate accounts?</p> <p>18   MR. OXFORD: Object to the form.</p> <p>19   A. I don't know.</p> <p>20   Q. You've never experienced that?</p> <p>21   A. I've never experienced that.</p> <p>22   Q. Do you know what level LBI was at in</p> <p>23   September of 2008?</p> <p>24   A. No, I do not.</p> <p>25   Q. Did you ask anyone that?</p>

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1	<p style="text-align: center;">D. McIsaac</p> <p>2 A. I may have asked, and I don't know if</p> <p>3 I ever got -- I don't believe I ever got an</p> <p>4 answer.</p> <p>5 Q. Do you have a sense of which level</p> <p>6 they would be at given what you have learned</p> <p>7 under the course of your studies in this case?</p> <p>8 MR. OXFORD: I'll object to the form</p> <p>9 of the question.</p> <p>10 MR. GREEN: Objection also.</p> <p>11 MR. KAY: Objection.</p> <p>12 A. I don't know.</p> <p>13 Q. What are the OCC's -- withdrawn. Do</p> <p>14 you have an understanding of how the OCC</p> <p>15 computes margin requirements as it relates to</p> <p>16 volatility?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. Again, I'm not an expert in that area.</p> <p>19 I have somewhat of a knowledge that they are</p> <p>20 looking at the potential movement in the assets</p> <p>21 and look for margin to satisfy a market movement</p> <p>22 of a one- or two-day market swing based on some</p> <p>23 kind of theoretical pricing models.</p> <p>24 Q. Okay. You just said that you're not</p> <p>25 an expert in the area. What area were you</p>	<p>1 D. McIsaac</p> <p>2 referring to?</p> <p>3 A. In how they calculate the margin</p> <p>4 requirements.</p> <p>5 Q. Are the -- is the OCC's formula</p> <p>6 guaranteed to ensure that in the event of a</p> <p>7 liquidation there would not be a deficit in the</p> <p>8 margin account?</p> <p>9 MR. OXFORD: Object to the form.</p> <p>10 A. I don't think any calculation can</p> <p>11 ensure anything. I think their calculation is</p> <p>12 there for whatever they feel they need to</p> <p>13 address as far as the volatility of the firm</p> <p>14 and/or the marketplace.</p> <p>15 Q. Is it possible that a firm, a</p> <p>16 broker-dealer could have an excess in an account</p> <p>17 and nevertheless, upon a liquidation the</p> <p>18 following day, incur a cost that exceeds the</p> <p>19 amount that they had posted?</p> <p>20 MR. OXFORD: Objection to the form.</p> <p>21 A. I don't have a relevance to look at to</p> <p>22 determine that. I don't know. I've never seen</p> <p>23 it happen. I don't know.</p> <p>24 Q. You don't know if it's possible for</p> <p>25 the liquidation to cost more than what the</p>
1	<p style="text-align: center;">Page 32</p> <p>2 D. McIsaac</p> <p>3 margin posted?</p> <p>4 A. I would assume anything is possible.</p> <p>5 I don't know if it's ever happened or there's</p> <p>6 any, you know, history of it happening.</p> <p>7 Q. Would it be more or less likely to</p> <p>8 happen in a particularly volatile market based</p> <p>9 on what you know about how the OCC generally</p> <p>formulates their margin requirements?</p> <p>10 MR. OXFORD: Objection to the form.</p> <p>11 A. I guess in a volatile market anything</p> <p>12 is more possible to happen. It would be based</p> <p>13 on what their positions were at the time, were</p> <p>14 they long or short, were they short calls, short</p> <p>15 puts. It's, I guess, it's according to what the</p> <p>16 relevance is of their -- of their book.</p> <p>17 Q. You have your report there with you?</p> <p>18 A. Yes.</p> <p>19 Q. Could you turn to page 14, please, and</p> <p>20 could you review footnote 9?</p> <p>21 A. Yes.</p> <p>22 Q. Footnote 9 references an OCC Rule</p> <p>23 601(c), do you see that?</p> <p>24 A. Uh-huh. Yes, I do.</p> <p>25 Q. How long have you been familiar with</p>	<p>1 D. McIsaac</p> <p>2 this particular rule?</p> <p>3 A. In general terms, probably, you know,</p> <p>4 understanding how the OCC works, probably, in</p> <p>5 general terms, forever.</p> <p>6 Q. Okay.</p> <p>7 A. You know, but not specifically. I've</p> <p>8 never had to deal with it in specifics.</p> <p>9 Q. The rule states that the margin</p> <p>10 requirement shall be the amount of margin assets</p> <p>11 that must be held in the account such that the</p> <p>12 minimum expected liquidation value of the</p> <p>13 account after excluding positions covered by</p> <p>14 deposits in lieu of margin, measured at</p> <p>15 confidence levels as may be selected by the</p> <p>16 corporation from time to time, will not be less</p> <p>17 than zero.</p> <p>18 Do you have an understanding of what</p> <p>19 the phrase "minimum expected liquidating value"</p> <p>20 means?</p> <p>21 MR. OXFORD: Objection to the form.</p> <p>22 Misstates the document.</p> <p>23 A. "Minimum expected liquidating value" I</p> <p>24 believe is the minimum value of the account</p> <p>25 after it liquidates.</p>

Page 34	Page 35
1                   D. McIsaac	1                   D. McIsaac
2    Q. Is it the minimum value or the minimum	2    risk of that being the case in a particularly
3    expected value?	3    volatile market?
4    A. Minimum expected value upon	4    MR. OXFORD: Object to the form.
5    liquidation.	5    A. Could you repeat your question? because
6    Q. Okay. And expected by whom?	6    it was sort of one question, then another?
7    A. I'm assuming this is an OCC rule, so	7    Could you --
8    it's expected by them.	8    Q. Sure. In a market in which there's
9    Q. Okay.	9    more than average volatility, would you agree
10   A. Based on the confidence level they	10   that it's more likely that their margin
11   select.	11   requirement will be insufficient to cover the
12   Q. Do you have any understanding of what	12   liquidating cost of an account?
13   their confidence level would be based on?	13   MR. OXFORD: Same objection.
14   A. No, I do not.	14   A. More likely than what?
15   Q. In a market in which there's more than	15   Q. Than in an average -- than in a market
16   average volatility, would you agree that it's	16   with average volatility.
17   more likely that their margin requirement will	17   A. Okay, so if you're saying in a market
18   be insufficient to cover the liquidating cost of	18   that has extreme volatility, could their
19   an account?	19   calculations be more likely to -- to not be
20   MR. OXFORD: Object to the form.	20   correct than in a market that has average
21   A. Based on the fact that I have never	21   volatility? I guess the answer would be yes.
22   heard of them liquidating anybody and making a	22   Q. Okay. Are you aware that on Friday,
23   call to the rest of the members, I don't know if	23   September 19, 2008, the OCC refused to allow LBI
24   it's ever been proven that that's the case.	24   to withdraw margin from its account that was in
25   Q. Do you agree that there's more of a	25   excess of the requirements it had published that
Page 36	Page 37
1                   D. McIsaac	1                   D. McIsaac
2    morning?	2    MR. OXFORD: Object to the form.
3    A. I have heard inferences to that. I	3    A. Again, I'm not there, but I believe
4    might have seen an e-mail to that.	4    their overall goal is to make sure that there's
5    Q. Have you -- in your experience, has	5    adequate margin so that the entities that
6    the OCC ever, to your knowledge, refused a	6    they're clearing for can be or could be
7    clearing member the ability to withdraw excess	7    liquidated at no cost to the rest of the
8    from its account?	8    members.
9    A. To my knowledge, I don't think so that	9    Q. Can you turn to page 29 of your
10   I'm aware of, but I'm sure if they were	10   report. In paragraph 70, you say here that
11   concerned with other firms, they might have done	11   "Barclays' acquisition balance sheet recognizes
12   the same with other firms. It was a time and	12   a day one gain of \$1.19 billion relating to
13   place in the marketplace.	13   options." Do you see that?
14   Q. Is it possible that the OCC made that	14   A. Yes.
15   decision because it was concerned that the	15   Q. And in the next sentence, you say that
16   market may move away from the positions to the	16   "this appears to be comprised of approximately
17   extent that the margin requirements were not	17   \$2.29 billion of margin at the OCC less \$1.1
18   going to be sufficient to cover the cost of a	18   billion of liabilities at the OCC." Do you see
19   liquidation?	19   that?
20   A. I can't determine what OCC's thought	20   A. Yes.
21   process was. Maybe they knew there was an	21   Q. Would you agree that if Barclays had
22   impending sale. I don't know what the rationale	22   not received the \$2.29 billion of margin at the
23   was on their part.	23   OCC, Barclays would have recorded a loss of \$1.1
24   Q. What is the OCC's overall goal in	24   billion on these options on its acquisition
25   setting a margin requirement?	25   balance sheet?

<p>1 D. McIsaac</p> <p>2 A. I'm not sure. From my understanding</p> <p>3 the proprietary assets, proprietary options at</p> <p>4 OCC were positive by about 300 million. I</p> <p>5 believe the short side was an affiliate that</p> <p>6 cleared through the OCC through -- that was a</p> <p>7 subordinated affiliate. So I believe the assets</p> <p>8 they were buying were positive or net asset</p> <p>9 value of about 300 million as well as they were</p> <p>10 part of a larger portfolio of assets that they</p> <p>11 were buying.</p> <p>12 So they might have -- I don't see</p> <p>13 where the loss came from because I believe it</p> <p>14 was affiliates positions, but even if there was,</p> <p>15 it would be offset by possibly gains in other</p> <p>16 areas.</p> <p>17 Q. Can you describe the larger portfolio</p> <p>18 of assets that Barclays was buying?</p> <p>19 A. I believe there was a repo that had</p> <p>20 significant value of assets for which they</p> <p>21 forgave a liability of Lehman's in lieu of the</p> <p>22 assets.</p> <p>23 Q. Okay. Were they long positions or</p> <p>24 short positions?</p> <p>25 A. Long positions.</p>	<p>1 D. McIsaac</p> <p>2 Q. Were there any short positions</p> <p>3 undertaken on the fixed equity side?</p> <p>4 A. I don't believe so.</p> <p>5 Q. Were there short equity positions at</p> <p>6 Lehman outside of that repo?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 A. I don't know. I would assume there</p> <p>9 might have been, but I don't know.</p> <p>10 Q. Do you recall reviewing the Asset</p> <p>11 Purchase Agreement that the parties signed on</p> <p>12 September 16?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall what the amount of long</p> <p>15 and short positions was that was described in</p> <p>16 that document?</p> <p>17 A. I believe it was 70 billion long, 69</p> <p>18 billion short.</p> <p>19 Q. Do you have any reason to believe that</p> <p>20 the 69 billion short didn't still exist by</p> <p>21 Monday, the 22nd of September, 2008?</p> <p>22 A. I have no reason to know what the</p> <p>23 number was at that point in time.</p> <p>24 Q. Is it fair to say that those ceased</p> <p>25 being part of the transaction?</p>
<p>Page 40</p> <p>1 D. McIsaac</p> <p>2 A. Those short positions, yes.</p> <p>3 Q. Okay. And the long positions still</p> <p>4 were coming over?</p> <p>5 MR. OXFORD: Object to the form.</p> <p>6 Q. Is that correct?</p> <p>7 A. My understanding of the Clarification</p> <p>8 Letter and the APA, yes.</p> <p>9 Q. And do you understand, generally, the</p> <p>10 nature of the agreement with respect to the</p> <p>11 assets that were pledged under the Fed repo?</p> <p>12 A. Could you be a little more specific?</p> <p>13 I'm not sure what your question is.</p> <p>14 Q. Sure. Was there a give and take with</p> <p>15 respect to the long positions that were pledged</p> <p>16 at the Fed repo?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 MR. KAY: Same objections.</p> <p>19 A. What's give and take? I just don't</p> <p>20 know what you mean by that. If you could --</p> <p>21 Q. Sure. What is your understanding of</p> <p>22 the -- of the transaction as it related to the</p> <p>23 assets in the Fed repo?</p> <p>24 MR. OXFORD: Object to the form.</p> <p>25 A. My understanding is that the Fed was</p>	<p>Page 41</p> <p>1 D. McIsaac</p> <p>2 providing Lehman with liquidity, somewhere 45,</p> <p>3 50 billion dollars, I don't remember exactly,</p> <p>4 and that was secured by assets of I think I read</p> <p>5 somewhere about 4 to 5 billion dollars extra in</p> <p>6 assets.</p> <p>7 I believe Barclays assumed that repo.</p> <p>8 I believe they took over most of the assets,</p> <p>9 possibly, not all of them, and those were long</p> <p>10 assets that they -- that was part of the</p> <p>11 purchase agreement at the end.</p> <p>12 Q. Do you have any -- did you study the</p> <p>13 pleadings in this case that related to the Fed</p> <p>14 repo transaction?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 A. I don't believe so. I don't think I</p> <p>17 did.</p> <p>18 Q. Okay. Are you aware that Barclays had</p> <p>19 expressed concern over the value of the assets</p> <p>20 in the Fed repo relative to the amount of cash</p> <p>21 it was advancing?</p> <p>22 A. No. If I didn't read the pleadings, I</p> <p>23 probably don't know that.</p> <p>24 Q. You mentioned that there were</p> <p>25 affiliate positions that you believe were part</p>

<p>1 D. McIsaac</p> <p>2 of the account that you referenced liabilities</p> <p>3 for in paragraph 70 of your report?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Can you describe generally what your</p> <p>6 understanding was with respect to the transfer</p> <p>7 of those positions to Barclays?</p> <p>8 MR. OXFORD: Object to the form.</p> <p>9 Misstates his testimony.</p> <p>10 A. There was an affiliate that signed a</p> <p>11 subordination agreement between them and LBI,</p> <p>12 and I believe the OCC is a party to that,</p> <p>13 whereby they would allow their securities to be</p> <p>14 commingled with the firm's securities. It's an</p> <p>15 advantage usually for the firm because it gets</p> <p>16 them better margin rates, possibly. And it was</p> <p>17 my understanding it was short positions of the</p> <p>18 affiliate.</p> <p>19 From my understanding of reading most</p> <p>20 of the stuff I've read, I didn't -- I do not</p> <p>21 believe that Barclays was taking over any</p> <p>22 affiliates accounts.</p> <p>23 Q. Okay. I'm showing you an exhibit</p> <p>24 that's been marked as Exhibit 51. Do you</p> <p>25 recognize this document?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes, it's the Transfer and Assumption</p> <p>3 Agreement.</p> <p>4 Q. And did you review this in connection</p> <p>5 with preparing your report?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see in the first "whereas"</p> <p>8 clause on the first page where it says, "Lehman</p> <p>9 is a clearing member of OCC and carries one or</p> <p>10 more accounts (nos. 74, 84 and 273)"?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And it defines that as "Account," with</p> <p>13 a capital A?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Is it your understanding that</p> <p>16 the term "account" there encompasses the</p> <p>17 accounts that you referenced in relation to</p> <p>18 paragraph 70 of your report?</p> <p>19 A. I believe they use the same accounts,</p> <p>20 yes.</p> <p>21 Q. If you go down to paragraph 1(b) on</p> <p>22 that same page, do you see where it says,</p> <p>23 "Barclays hereby accepts such sale, assignment,</p> <p>24 and transfer of the Account, agrees to be bound</p> <p>25 by and receive the benefits of maintaining such</p>
<p>1 D. McIsaac</p> <p>2 Account, and assumes and agrees to perform each</p> <p>3 obligation arising out of or to be performed</p> <p>4 with respect to the activity in the Account"?</p> <p>5 A. Yes.</p> <p>6 Q. Do you understand that to mean that</p> <p>7 Barclays assumed settlement responsibility for</p> <p>8 all of the positions in all of the Lehman's</p> <p>9 accounts at the OCC?</p> <p>10 A. Yes. I think Barclays assumed</p> <p>11 clearance and settlement of all the accounts</p> <p>12 there.</p> <p>13 Q. Okay. And what is the basis for your</p> <p>14 understanding that Barclays -- withdrawn.</p> <p>15 Is it fair to say that Barclays was</p> <p>16 responsible for settling and clearing the</p> <p>17 positions in the 074F and 074M accounts</p> <p>18 regardless of whether they were held on the firm</p> <p>19 account on behalf of an affiliate?</p> <p>20 A. Yes, they would have been responsible</p> <p>21 for settling and clearing and liquidating if</p> <p>22 need be.</p> <p>23 Q. Does that mean that on short positions</p> <p>24 that were held on behalf of affiliates Barclays</p> <p>25 would have to advance any securities that were</p>	<p>1 D. McIsaac</p> <p>2 owed or advance any cash that was owed on an</p> <p>3 exercise or an assignment of one of those</p> <p>4 positions?</p> <p>5 MR. OXFORD: Object to the form.</p> <p>6 A. It means they would have either</p> <p>7 settled the transactions if they were called or</p> <p>8 closed them out.</p> <p>9 Q. You say in your report that Barclays</p> <p>10 charged back the LBI estate for the cost of</p> <p>11 closing out affiliate positions. Let me give</p> <p>12 you the page reference.</p> <p>13 If you turn to pages 26 and 27 of your</p> <p>14 report, paragraph 66 on page 26, you say,</p> <p>15 "Barclays did not assume any risk with respect</p> <p>16 to LBI affiliate customers' futures positions."</p> <p>17 Oh, wait. I'm sorry. Let me get to</p> <p>18 the options positions because that's what we're</p> <p>19 talking about now.</p> <p>20 MR. OXFORD: I think it's probably</p> <p>21 page 21, Trish, you're looking for.</p> <p>22 MS. BLOOMER: Thank you.</p> <p>23 Q. You say in paragraph 51 that Barclays</p> <p>24 has charged back the LBI estate for the cost of</p> <p>25 maintaining and closing out those positions.</p>

<p style="text-align: right;">Page 46</p> <p>1 D. McIsaac    2 You see that?    3 A. Yes.    4 Q. What is -- is the Dziemian declaration    5 that you cite here the only factual basis for    6 that statement?    7 A. I believe there's a schedule that I    8 saw that had those amounts in it. I'm not sure    9 if it came from Dziemian's declaration or where    10 else it might have come from, but his    11 declaration did say they were charging them    12 back.</p> <p>13 MS. BLOOMER: I think maybe this is a    14 good time to take a first break and that way    15 I can pull an extra document that I missed.</p> <p>16 MR. OXFORD: Okay. That would be    17 great. Thanks.</p> <p>18 THE VIDEOGRAPHER: The time is 10:25.    19 We're going off the record.</p> <p>20 (Recess.)</p> <p>21 THE VIDEOGRAPHER: This is the start    22 of tape number 2. The time is 10:43. We    23 are back on the record.</p> <p>24 BY MS. BLOOMER:    25 Q. Welcome back, Mr. McIsaac.</p>	<p style="text-align: right;">Page 47</p> <p>1 D. McIsaac    2 A. Thank you.    3 Q. I want to show you a document -- I    4 think we're going to have to mark this. It's    5 already been marked, but I don't have the marked    6 copy. So, Exhibit 685.    7 (Exhibit 685, Declaration of Daniel    8 Dziemian, marked for identification, as of    9 this date.)    10 Q. I'm showing you a document that's    11 marked as Exhibit 685, Mr. McIsaac. We were    12 looking before the break at paragraph 51 of your    13 expert report in which you state that Barclays    14 has charged back the LBI estate for the cost of    15 maintaining and closing out those positions.    16 You see that?    17 A. Yes.    18 Q. Okay. And which positions precisely    19 were you referring to in this statement?    20 A. Let me just see. I guess it would be    21 non-PIM customer transactions.    22 Q. Okay. Would that include affiliates?    23 A. Yes.    24 Q. And you cite the Dziemian declaration    25 at paragraphs 12 and 14 through 16 as the</p>
<p style="text-align: right;">Page 48</p> <p>1 D. McIsaac    2 support for that statement.    3 Can you review those paragraphs and    4 tell me where in this declaration it suggests    5 that Barclays charged back the LBI estate for    6 the cost of maintaining and closing out the    7 affiliate positions?    8 A. I presume it's in paragraph 14.    9 Q. And what portion of the paragraph?    10 A. The fourth or fifth line down, "The    11 net effect of the close-out and liquidation of    12 all positions and equities relating to the 074C    13 LBI Affiliate Options on the LBI Bridge Account    14 is a net receivable from LBI to Barclays in the    15 amount of \$80 million."    16 Q. And are you assuming in that statement    17 that a net receivable on the LBI Bridge Account    18 is the equivalent of charging back the estate    19 for the cost of closing out those options?    20 MR. OXFORD: Objection to the form.    21 A. If you record a receivable, I assume    22 you think somebody's going to pay you for that,    23 yes.    24 Q. Do you understand what the purpose of    25 the LBI Bridge Account was?</p>	<p style="text-align: right;">Page 49</p> <p>1 D. McIsaac    2 A. I'm -- by the words there, I assume    3 it's a bridge account between two entities or    4 between two systems. On one side you book --    5 you may book the receivables. On the other side    6 you book the payables.    7 Q. Okay. If you look at paragraph 13, it    8 says, "The bridge accounts were necessary to    9 account for the fact that the settlement bank    10 and the settlement depository as of    11 approximately September 23, 2008, were switched    12 to Barclays while the accounts of these    13 customers and affiliates remained with LBI."    14 You see that?    15 A. Yes.    16 Q. Is it possible that the bridge account    17 was necessitated by accounting concerns and the    18 need to process trades on both sides on a system    19 as opposed to because Barclays was charging back    20 the estate for any of those costs?    21 A. Could you repeat --    22 MR. OXFORD: Object to the form.    23 A. Sorry.    24 Could you repeat the last part?    25 Because I don't understand the part where you</p>

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<p>1                   D. McIsaac  2 talked about charge back, the way you said it.  3           Q. Okay. Is it possible that the bridge  4 account was necessitated by accounting concerns  5 and the need to process trades on both sides on  6 a system as opposed to because Barclays was  7 charging back the estate for any of those costs?</p>	<p>1                   D. McIsaac  2           A. Do you want your copy back?  3           Q. Pardon? I realize it's yellow.  4           A. That's fine.  5           Q. I wanted to direct you to that portion  6 of it, so it's fine. Thank you.</p>
<p>8           MR. OXFORD: Same objection.  9           MR. GREEN: Objection.</p>	<p>7                   Do you see the portion that's boxed in  8 that deposition transcript?  9           A. Yes.</p>
<p>10          A. If they were booking them on both  11 sides, then wouldn't they be charging them back?  12 If they were taking responsibility for them,  13 then they would have written them off to an  14 expense, not a receivable.</p>	<p>10          Q. And do you see where Gary Romain says  11 that "we had written off 100 percent of it and  12 in the acquisition accounting, but it's been  13 recorded as an expense, an expense being a  14 deduction from the negative goodwill on the  15 acquisition"?</p>
<p>15          Q. Okay. Did you review Gary Romain's  16 deposition testimony in preparing your report?</p>	<p>16          A. Let me read it, please.</p>
<p>17          A. I believe I read it, yes.  18          Q. Okay. I'm going to mark this exhibit  19 as Exhibit 686.</p>	<p>17          MR. OXFORD: And Mr. McIsaac, to the  18 extent you feel necessary to answer the  19 question, you should read as much as you  20 need of Mr. Romain's testimony.</p>
<p>20                   (Exhibit 686, Deposition of Gary  21 Romain, marked for identification, as of  22 this date.)</p>	<p>21          Q. In fact, perhaps it would be better  22 for you to start on page 139 at the bottom of  23 the page, line 22, when Mr. Romain starts  24 describing --</p>
<p>23          Q. You have in front of you Gary Romain's  24 deposition testimony. Can you turn to page 141,  25 please?</p>	<p>25          A. Uh-huh.</p>
Page 52	Page 53
<p>1                   D. McIsaac  2           Q. -- the accounting treatment on the  3 affiliate options that we've been discussing.  4           MR. OXFORD: Thank you, Trish.  5           A. Okay. I've read it. Can you repeat  6 your question? I'm sorry.  7           Q. Sure. Do you see in on page 140 in  8 the answer provided on line 7 through 15 Gary  9 Romain says, "So if you look at the payments  10 made to close out positions and for some OCC  11 related-costs, the total payment made by  12 Barclays was \$104 million and the receivable,  13 which might otherwise have been recognized, has  14 been written off"?</p>	<p>1                   D. McIsaac  2 receivable which was charging them back, they  3 didn't take them to P&amp;L directly, and eventually  4 wrote them off. Maybe they deemed them  5 uncollectable, I'm not sure why, but I don't  6 know why you would set them up as a receivable  7 if you were going to write them off if you  8 didn't -- if you were taking responsibility from  9 the start. So Mr. Dziemian basically said that  10 they were being set up as receivables.</p>
<p>15          A. Yes.  16          Q. Did you read that in preparing your  17 report?  18          A. I probably read this, this deposition,  19 so yes, I probably read this, right.</p>	<p>11          Q. Would you agree that Barclays incurred  12 a cost of \$104 million according to the record  13 facts that you've see in this case on the  14 affiliate options positions in the 074C account?</p>
<p>20          Q. Is this inconsistent with your  21 understanding that Barclays charged back the LBI  22 estate for the cost of closing out affiliate  23 positions?  24          A. My understanding, and even from  25 reading here, it looks like they recorded a</p>	<p>15          MR. OXFORD: Object to the form.  16          A. I agree that that's what Mr. Romain  17 says in his deposition. I have not seen  18 anything to show me what the numbers are or had  19 anybody provide information, but that's what he  20 says here.  21          Q. Do you have any reason to dispute or  22 doubt the fact that Barclays incurred costs in  23 closing out these positions?  24          A. No, I do not.  25          Q. Do you have any reason to believe that</p>

	Page 54	Page 55
1	D. McIsaac	D. McIsaac
2	Barclays collected the amounts that it incurred	respect to creditor claims?
3	in closing out affiliate positions from the LBI	3 A. I'm not a SIPC expert. I have a
4	estate?	4 general understanding of the SIPC claims.
5	A. No, I do not.	5 Q. Are you an expert in Customer
6	Q. Do you believe that Barclays did	6 Protection Rules?
7	collect the costs from the LBI estate that it	7 A. Yes.
8	incurred in closing out --	8 Q. What's your understanding of where
9	A. I don't know if they did or didn't.	9 customers fall in terms of priority when they
10	Q. -- the LBI affiliate positions?	10 have claims against a SIPC Trustee or an estate
11	Please allow me to finish the	11 and bank in SIPC proceedings relative to general
12	question.	12 Creditors?
13	-- in closing out the LBI affiliate	13 MR. OXFORD: Object to the form.
14	positions?	14 A. I believe SIPC customers have first
15	A. I don't know if they collected or not	15 priority to the assets in the customer estate
16	or presented a bill or not.	16 and then share rateably with the general
17	Q. Is it your general understanding that	17 Creditors if there's not enough -- not enough
18	entities write off amounts that they were able	18 moneys in the general estate to satisfy them.
19	to collect?	19 Q. Is it your understanding that the LBI
20	MR. OXFORD: Object to the form.	20 estate has sufficient assets currently to cover
21	A. No. You usually write them off when	21 all customer claims?
22	you think there might be a -- you may not be	22 MR. OXFORD: Object to the form.
23	able to collect them.	23 A. I don't know if they have or don't
24	Q. Do you have a general understanding of	24 have. I think that's still being assessed.
25	the priorities in a SIPC liquidation with	25 Q. Is it possible that the reason
	Page 56	Page 57
1	D. McIsaac	D. McIsaac
2	Barclays wrote these expenses off is because	2 Q. Do you think -- do you have any reason
3	Barclays didn't expect it would ever be able to	3 to believe that Barclays thought it would be
4	recover these costs from the Lehman estate?	4 paid by the LBI estate for losses it incurred on
5	A. I can't determine why Barclays wrote	5 affiliate positions that it took clearance
6	them off.	6 responsibility for?
7	Q. Do you generally consider a	7 MR. OXFORD: Object to the form.
8	broker-dealer who is in SIPC proceedings to be a	8 MR. GREEN: Objection.
9	good credit risk?	9 A. Again, I don't know what was in
10	A. No, I would not consider them a good	10 Barclays' mind and what they thought when they
11	credit risk.	11 wrote off the receivables. I'm not sure what
12	Q. Would you extend credit to a	12 the basis was.
13	broker-dealer in SIPC liquidation?	13 Q. Would you agree that your report
14	A. Would I extend credit to them after	14 characterizes the level of risk associated with
15	they were in liquidation?	15 affiliate positions to be minimal, if it existed
16	MR. OXFORD: Object to the form.	16 at all?
17	A. Sorry.	17 MR. OXFORD: Object to the form.
18	Probably if it was court-approved, I	18 A. Yes, I think it says it's less risky
19	think there's some way where the court can	19 because the credit is borne by the affiliates,
20	approve you providing credit to a liquidated	20 the market risk is borne by the affiliates, and
21	estate, but no, in general terms, I wouldn't.	21 that I believe Barclays was not taking
22	Q. Why not?	22 responsibility for any affiliates' positions.
23	A. Because you have a bankrupt estate	23 Q. But you agree that Barclays was taking
24	that you don't know the creditworthiness of	24 settlement responsibility for those positions?
25	whether or not you'll be paid.	25 A. It appears that in the TAA that they

<p>1 D. McIsaac</p> <p>2 took settlement responsibility for them.</p> <p>3 Q. And are you aware of the financial</p> <p>4 state of the LBI affiliates themselves during</p> <p>5 the month of September 2008?</p> <p>6 MR. OXFORD: Object to the form.</p> <p>7 A. I believe some of them were in</p> <p>8 liquidation and some of them may not have been.</p> <p>9 Q. Would you consider them a credit risk</p> <p>10 at that time?</p> <p>11 MR. OXFORD: Object to the form. You</p> <p>12 mean any time in September?</p> <p>13 Q. Sure. We'll start with any time in</p> <p>14 September.</p> <p>15 A. I don't know what the credit risk</p> <p>16 would have been in September prior to anybody</p> <p>17 going into liquidation, what the analysis would</p> <p>18 have been, and people will take risk based on</p> <p>19 what the rewards they think they will receive.</p> <p>20 Q. What reward was Barclays receiving by</p> <p>21 agreeing to take over settlement responsibility</p> <p>22 for the affiliate positions?</p> <p>23 A. Maybe the business that was there and</p> <p>24 maybe they were willing to take on an additional</p> <p>25 risk to -- to get the customer business and</p>	<p>1 D. McIsaac</p> <p>2 whatever other business was there.</p> <p>3 Q. Were they going to see any profit from</p> <p>4 taking over the affiliate positions themselves?</p> <p>5 A. When you take over a business, not</p> <p>6 every piece of it may be profitable. So you may</p> <p>7 accept some risk to get the profitable pieces of</p> <p>8 it. I don't know why they assumed the</p> <p>9 responsibility for the affiliates if they didn't</p> <p>10 want them.</p> <p>11 Q. Earlier you were describing</p> <p>12 transactions in which you conducted due</p> <p>13 diligence in one of your prior companies, and</p> <p>14 you explained that the acquirer spent a week to</p> <p>15 several weeks reviewing the customer base to</p> <p>16 determine which customers it wanted and which</p> <p>17 customers it didn't?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Do you believe that Barclays had</p> <p>20 adequate time during the week of September 15,</p> <p>21 2008 to review all of the customers that it was</p> <p>22 acquiring or not acquiring from LBI?</p> <p>23 MR. OXFORD: Object to the form.</p> <p>24 A. It possibly didn't have time to review</p> <p>25 all the customers, but it certainly had time to</p>
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	Page 62	Page 63
1	D. McIsaac	D. McIsaac
2	transferred to another broker-dealer.	deal was negotiated?
3	Q. Do you know how much time Barclays and	A. I read the Asset Purchase Agreement.
4	Lehman had to negotiate the terms of this	I read the Clarification Letter. I read the
5	transaction before they entered into the APA?	TAA. You know, I read some e-mails that went
6	A. No, I do not.	around. As a general knowledge of what was
7	Q. Would it surprise you to hear that it	happening in 2008, you know, I lived it.
8	was less than 24 hours?	Q. Okay. So is it fair to say that you
9	MR. OXFORD: Object to the form. You	prepared your report without knowing the amount
10	can answer.	of time that it took Lehman -- that Barclays and
11	A. It would -- wouldn't surprise me or	Lehman had to negotiate the APA?
12	not surprise me. Lehman was in financial	A. I didn't specifically find out how
13	difficulty at that time and there were reports	much time they took to negotiate it and I don't
14	in the papers that a lot of people were looking	know what that has to do with what we're talking
15	at Lehman from time to time. So I have no idea	about. I'm not sure what the timing, you know,
16	when Barclays started to look at it and	has to do with what they decided or what they
17	determined what they wanted to do.	didn't decide to do. They certainly didn't have
18	Q. You didn't review that in connection	to do it, I don't think, at any point in time.
19	with this report?	There was not a gun held to their head, I don't
20	A. Review? What would I have reviewed to	believe. I mean, unless I didn't -- there's
21	say that? I'm asking what -- what would I have	more information than I know.
22	reviewed?	Q. Uh-huh. So when you prepared your
23	Q. I understand that you're asking that,	opinions in your report, did you believe it was
24	but I'm asking you what did you review in order	possible that the parties had spent more than a
25	to understand the circumstances in which this	week negotiating the terms of the APA?
	Page 64	Page 65
1	D. McIsaac	D. McIsaac
2	MR. OXFORD: Object to the form.	A. No, I did not.
3	A. I don't think I gave much thought to	MR. OXFORD: Sorry. If you can slow
4	how much time they spent negotiating it. I	down, Mr. McIsaac, to let me get my
5	understand the timing of what was happening	objection.
6	around then. I don't know how long they were	I'll object to the form of the
7	talking about the APA, what conversations they	question and particularly to the vagueness
8	may have had during the time period. I don't	of the term "advisors."
9	believe that's public information.	Q. Okay. When did you speak with
10	Q. Were you allowed to ask questions of	Deloitte?
11	fact witnesses during your investigation?	MR. OXFORD: Object to the form.
12	A. I --	A. Regarding? Excuse me, regarding what?
13	MR. OXFORD: I'll object to the form	Q. You said earlier today that in
14	of the question.	preparing for your deposition today you spoke
15	Q. Okay. Go ahead. You can answer.	with Deloitte. Was that the first time that you
16	MR. OXFORD: I'm not sure in terms	spoke with them?
17	of --	A. Deloitte is the financial advisors for
18	Q. Did you talk to anybody -- let me	the Trustee. In working on the original work I
19	rephrase the question.	did with the motion, I spoke to Deloitte, if
20	MS. BLOOMER: Thanks, Neil.	that's what you mean, but not in relation to
21	Q. Did you talk to anybody who was	this.
22	involved in the negotiation of the transaction?	Q. Okay. Was Deloitte present, to your
23	A. No, I did not.	understanding, during the negotiations of this
24	Q. Did you speak with the advisors who	deal?
25	were present at the time?	A. I don't believe they were, but I don't

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1	D. McIsaac	
2	know.	
3	Q. Did you ask them?	
4	A. No, I did not.	
5	Q. Did you ask them any of the	
6	circumstances under which the deal was	
7	negotiated?	
8	A. No, I did not.	
9	Q. Did you ask anyone what the	
10	circumstances were of the deal at the time it	
11	was negotiated?	
12	A. I think I understand what was going on	
13	in the environment at that time. I don't think	
14	I had to ask specifically what was happening in	
15	the environment at that time. It was a rough,	
16	you know, a difficult time and I don't know if	
17	Barclays had one day or five days or how long	
18	they were reviewing the transaction.	
19	Q. You don't know if it was ten days?	
20	A. I don't know if it was ten days.	
21	Q. And you don't know if it was a month	
22	that Barclays had to review the transaction?	
23	A. That's right.	
24	Q. Okay.	
25	A. But that doesn't change my thoughts on	
	Page 68	Page 69
1	D. McIsaac	
2	the negotiations that took place during the	
3	structuring of that deal?	
4	A. No, I do not.	
5	Q. With respect to the deals that you	
6	have personal knowledge of, what's the shortest	
7	amount of time that you know of in which an	
8	acquisition of a broker-dealer business took	
9	place?	
10	MR. OXFORD: Object to the form.	
11	Vague.	
12	A. I -- I've been involved in some	
13	acquisitions and mergers that I don't know how	
14	much time was spent in doing the negotiation.	
15	When UBS and Swiss Bank merged, I have no idea	
16	how long it took for them to do the due	
17	diligence and decide on the merger.	
18	Q. What's the shortest amount of time	
19	with respect to a transaction that you do have	
20	an idea of how long it took?	
21	A. Probably a month or so.	
22	Q. You say in your report that the	
23	circumstances of this transaction don't affect	
24	your opinion. Do you recall saying that in your	
25	report?	

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1	D. McIsaac	
2	You can answer.	
3	A. I'm sorry. I believe firms negotiate	
4	a shell of a deal and then usually negotiate the	
5	specifics. Until a final contract is signed and	
6	it's consummated, that is not, you know, it's	
7	not a closed deal.	
8	Q. Showing you a document that's been	
9	premarked as Exhibit 630.	
10	Can you take the time to review this	
11	e-mail and let me know when you're ready?	
12	(Document review.)	
13	A. Yes.	
14	Q. Did you review this document in	
15	preparing for your deposition today?	
16	A. I believe I might have seen this. I	
17	don't remember exactly, but I might have seen	
18	this e-mail trail.	
19	Q. And had you reviewed this document at	
20	the time you prepared your expert report on	
21	exchange-traded derivatives?	
22	A. I thought I just answered that. I	
23	think I might have reviewed this when I -- when	
24	I prepared it.	
25	Q. Oh, I was asking you whether you	
	Page 72	Page 73
1	D. McIsaac	
2	Gottlieb. Do you know who Ed Rosen is?	
3	A. Yes. He's a lawyer for Cleary	
4	Gottlieb.	
5	Q. And do you know who Cleary Gottlieb	
6	was representing in this transaction?	
7	A. I believe they were representing	
8	Barclays.	
9	Q. And you see Hughes Hubbard is also	
10	copied on these e-mails, Giddens and Kobak?	
11	A. Uh-huh.	
12	Q. Do you know who they are?	
13	A. Mr. Giddens is the Trustee and Mr.	
14	Kobak is his legal counsel, I believe.	
15	Q. Okay. And you see that the SPIC	
16	organization, Steve Harbeck, was also copied?	
17	A. Yes.	
18	Q. You said earlier in your testimony	
19	that you didn't think the parties had to do the	
20	deal in any particular amount of time, and I	
21	believe you said they didn't have a gun to their	
22	head. Do you recall that testimony?	
23	A. Yes.	
24	Q. Do you agree that this e-mail suggests	
25	that there was some urgency to the parties in	

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1 D. McIsaac	1 D. McIsaac
2 If they didn't think they had enough time to do	2 OCC. I have not been involved in a liquidation
3 the due diligence and to understand what they	3 at the OCC.
4 were buying, they didn't have to buy it I guess.	4 Q. Have you been involved in a
5 Q. And they didn't have to buy it if they	5 liquidation at any other clearing organization?
6 didn't like the terms of the deal either, right?	6 A. I have not personally been involved,
7 A. Right.	7 no.
8 Q. You agree that the parties were aware	8 Q. What is your understanding of what the
9 that the OCC was at least threatening to	9 OCC's rights are in the event of a liquidation?
10 liquidate the accounts on the 22nd if the deal	10 MR. OXFORD: Object to the form.
11 didn't close that morning?	11 A. I believe they have the right to
12 A. Yes.	12 liquidate the positions and charge back to the
13 Q. Do you have any experience that would	13 clearing firm any losses they incur that's not
14 allow you to surmise on what an OCC	14 covered by the margin that they have available,
15 liquidation -- how an OCC liquidation would have	15 and if they don't, I assume -- I believe they
16 proceeded?	16 have the right to charge back to other members
17 MR. OXFORD: Object to the form.	17 of the clearing org.
18 A. I would assume they would either	18 Q. Okay. So you would agree then that
19 auction the positions off or, you know, closed	19 any margin that was posted at the OCC was
20 them out. I'm not sure how they would have	20 accessible to the OCC in order to cover the
21 proceeded. I'm not -- I have not seen one in my	21 costs of a liquidation?
22 past experience.	22 A. Yes.
23 Q. Any liquidation or any auction have	23 Q. And would you agree that all of the
24 you seen?	24 margin posted at the OCC was accessible to the
25 A. I have not seen a liquidation at the	25 OCC in the event that they wanted to auction off
Page 76	Page 77
1 D. McIsaac	1 D. McIsaac
2 the positions instead of liquidating them?	2 MR. OXFORD: Object to the form.
3 A. Yes.	3 A. I have heard a number maybe a billion
4 Q. Do you have any knowledge of any other	4 dollars, but I don't know if I've seen the
5 clearing organizations liquidating or auctioning	5 actual documents.
6 off positions?	6 Q. I'm showing you a document that's
7 A. I believe that during the week I've	7 marked as Exhibit 442. I certainly don't expect
8 been informed that the CME auctioned off LBI's	8 you to read the whole document.
9 positions.	9 A. Okay, good. I was going to say can I
10 Q. Do you have any understanding of the	10 please get a brief recess if that's the case.
11 approach that the CME took to auctioning off the	11 Q. This is a copy of the hearing that
12 positions?	12 took place before Judge Peck in the bankruptcy
13 A. I haven't reviewed anything firsthand,	13 proceeding on September 19, 2008. Have you had
14 but I believe they took the various positions	14 occasion to review any portion of the sale
15 and would have gone to other firms and asked	15 hearing transcript?
16 them to assume them.	16 A. I have reviewed this maybe six months
17 Q. And do you know what the CME was	17 ago.
18 offering in exchange for other members assuming	18 Q. Can you turn to page 61, the full
19 those obligations?	19 paragraph on page 61 starting "Since the hearing
20 A. No, I'm not, I'm not sure of the	20 last Wednesday," and it continues, "and in the
21 negotiations that occurred with them.	21 space of roughly 24 hours, your Honor, there
22 Q. Do you have an understanding of the	22 have been a number of significant events.
23 amount of money that was consumed in the auction	23 Yesterday the Chicago Mercantile Exchange
24 of the CME -- in the CME's auction of LBI's	24 unilaterally decided to close out all of
25 proprietary positions?	25 Lehman's positions on that exchange. That

	Page 78	Page 79
1	D. McIsaac	
2	closeout resulted in a loss to Lehman of	
3	approximately \$1.6 billion." Do you see that?	
4	A. Yes, I do.	
5	Q. Do you recall, does this refresh your	
6	recollection --	
7	A. Yes, I think this is probably where I	
8	saw it.	
9	Q. Do you have any reason to doubt the	
10	accuracy of the statement that's made on this	
11	page?	
12	A. No, I do not.	
13	Q. So you'd agree that the Chicago	
14	Mercantile Exchange closed out Lehman's	
15	positions at a cost of \$1.6 billion?	
16	MR. OXFORD: Object to the form.	
17	A. That's what it says here.	
18	Q. And that's what you believe happened?	
19	A. That's what I believe happened.	
20	MR. OXFORD: Object to the form.	
21	Q. What's your understanding of what a	
22	SIPC trustee's objectives are when analyzing the	
23	terms of a proposed bankruptcy sale?	
24	MR. OXFORD: I'll object to the form.	
25	A. I assume that they -- any sale is	
	Page 80	Page 81
1	D. McIsaac	
2	in that circumstance?	
3	MR. OXFORD: Objection to the form.	
4	A. No, I do not.	
5	Q. Is it your understanding that the	
6	proprietary positions in Lehman's OCC account as	
7	of the week of September 15 carried exposure?	
8	MR. OXFORD: Object to the form.	
9	A. All positions carry exposure. I'm not	
10	sure if I'm answering the question, your	
11	question, but all positions, as far as I'm	
12	concerned, carry exposure.	
13	Q. By transferring positions do you agree	
14	that you're eliminating that exposure?	
15	MR. OXFORD: I object to the form.	
16	A. By the person transferring them?	
17	Q. Uh-huh.	
18	A. Yes, they would limit their exposure.	
19	Q. So you would agree that LBI and the	
20	Trustee, by agreeing to transfer the proprietary	
21	positions to Barclays, was eliminating any	
22	exposure that it had on those positions?	
23	A. They would no longer have exposure on	
24	those positions, I assume, after they have	
25	transferred them.	

<p>1 D. McIsaac</p> <p>2 exposure, so would it be rational to transfer</p> <p>3 them for no consideration? I don't know at the</p> <p>4 point in time. I don't know -- the worst case</p> <p>5 you could be is zero if you're long. So not</p> <p>6 getting anything for them, if you liquidate</p> <p>7 them, gave them away for nothing or had them</p> <p>8 liquidated, you would be at the same place, and</p> <p>9 if the margin would cover any potential losses,</p> <p>10 you might be better off having the OCC liquidate</p> <p>11 them than give them away for free.</p> <p>12 Q. You testified earlier that you could</p> <p>13 never guarantee that the margin would be</p> <p>14 sufficient to cover exposures in a liquidation;</p> <p>15 is that right?</p> <p>16 MR. OXFORD: Objection. Misstates</p> <p>17 testimony.</p> <p>18 A. Yes, I believe I said something to</p> <p>19 that effect.</p> <p>20 Q. So would you agree that if you have</p> <p>21 short positions, there's exposure that can't be</p> <p>22 eliminated entirely unless you transfer the</p> <p>23 positions?</p> <p>24 MR. OXFORD: Object to the form.</p> <p>25 Misstates his testimony.</p>	<p>1 D. McIsaac</p> <p>2 A. They could be liquidated the next day</p> <p>3 and you would relieve your exposure.</p> <p>4 Q. I'm showing you an exhibit that's been</p> <p>5 marked 676A. Do you recognize this document?</p> <p>6 A. Yes, I believe I've seen this before.</p> <p>7 Q. Did you review it in preparing for</p> <p>8 today's deposition?</p> <p>9 A. No, I don't believe so.</p> <p>10 Q. Did you review it at the time that you</p> <p>11 prepared your report?</p> <p>12 A. Yes.</p> <p>13 Q. If you could turn to Exhibit 1 of this</p> <p>14 document. You see that Exhibit 1 shows the</p> <p>15 margin requirements on dates from 9/15/2008</p> <p>16 through 9/19/2008?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And just so that I don't force</p> <p>19 you to take this out of context, you should read</p> <p>20 the paragraph where he describes what the</p> <p>21 margin -- which margin requirements he's</p> <p>22 referring to. So if you look at --</p> <p>23 MR. OXFORD: Paragraph 6, I think.</p> <p>24 Q. -- paragraph 6 of Mr. Jones'</p> <p>25 declaration, he says, "Exhibit 1 hereto shows</p>
<p>Page 84</p>	<p>Page 85</p>

<p>1 D. McIsaac</p> <p>2 extrapolation on how they might impact the</p> <p>3 market.</p> <p>4 Q. Okay. And if the margin requirement</p> <p>5 is a proxy for exposure and increased by \$500</p> <p>6 million, as it had on two other days this week,</p> <p>7 would you agree that using Friday's close of</p> <p>8 business number may not be an accurate way to</p> <p>9 determine what the cost would be on Monday of</p> <p>10 closing out the positions?</p> <p>11 MR. OXFORD: Objection. Form.</p> <p>12 A. It's very difficult to determine that</p> <p>13 because I believe the 19th was a triple-witching</p> <p>14 day, so a lot of the exposures that were sitting</p> <p>15 there would have been closed out close of</p> <p>16 business. I don't know if this margin</p> <p>17 requirement is at the end of the day or the -- I</p> <p>18 believe this is the beginning of the day on the</p> <p>19 19th.</p> <p>20 Q. Uh-huh.</p> <p>21 A. So when all the options that they --</p> <p>22 that were in their account were called, anything</p> <p>23 that was expiring on the 19th would have had an</p> <p>24 impact on this amount. I don't know the balance</p> <p>25 or the size of the positions they had that were</p>	<p>1 D. McIsaac</p> <p>2 expiring on the 19th, but again, I believe if I</p> <p>3 remember Mr. Leitner's testimony, he looked at</p> <p>4 the margin as being a proxy for the most they</p> <p>5 could lose or the most that would cover</p> <p>6 Barclays' exposure.</p> <p>7 So, by looking at that, my guess this</p> <p>8 would be the worst place LBI would be in if they</p> <p>9 exposed. So if they were looking to transfer</p> <p>10 their assets, this might be a starting point for</p> <p>11 negotiations but not necessarily the ending</p> <p>12 point.</p> <p>13 Q. Okay. Whose responsibility do you</p> <p>14 understand it was to settle the trades that</p> <p>15 occurred over the expiration weekend, Barclays</p> <p>16 or Lehman's?</p> <p>17 A. I believe it was Lehman's.</p> <p>18 Q. You believe it was Lehman's?</p> <p>19 A. Barclays didn't sign the agreement</p> <p>20 until the 22nd. I believe they all settle over</p> <p>21 the weekend.</p> <p>22 Q. And when would the pays and collects</p> <p>23 from a weekend expiration be due?</p> <p>24 A. Monday morning, I believe, because you</p> <p>25 can't pay anything on the weekend.</p>
<p>Page 88</p>	<p>Page 89</p>

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1	D. McIsaac	D. McIsaac
2	You can answer. Thank you.	settled so they might have delivered securities
3	A. If they would have been marking their	against those exercised calls or puts, and on
4	positions to market, they would have, I assume	the cash settle piece, that the pay/collect
5	already, recorded those losses.	would occur on Monday morning. And if they
6	Q. When do you think that Lehman recorded	didn't have securities to deliver, they would
7	the losses that occurred over the weekend of	have to go out and buy the securities and make a
8	September 20th and 21st?	delivery.
9	A. I believe you would record those	MR. OXFORD: Trish, we've been going
10	effective the 19th because that's the option	about another hour. I don't know if this is
11	expiration date. At that point in time, you	a good time to take a five-minute break.
12	know what your locked-in is on your gains and	MS. BLOOMER: This is actually a good
13	losses. You would do that on a daily basis --	time. That would be fine. Off the record.
14	Q. And when --	THE VIDEOGRAPHER: The time is 11:36.
15	A. -- of the market movement.	This is the end of the tape labeled number
16	Q. I apologize for interrupting you.	2. We're going off the record.
17	And when would Lehman make the payment	(Recess.)
18	on those trades?	THE VIDEOGRAPHER: This is the start
19	A. I would assume the next business day.	of the tape labeled number 3. The time is
20	Q. And so you're assuming that Lehman	11:57. We are back on the record.
21	paid any amounts due to settle short options	BY MS. BLOOMER:
22	that were in its account over the weekend of	Q. Mr. McIsaac, could you turn in your
23	September 20th and -- 20th and 21st?	report to page 7, please. The first full
24	MR. OXFORD: I'll object to the form.	sentence at the top of the page --
25	A. I assumed that not everything is cash	A. Give me one second. One second.
	Page 92	Page 93
1	D. McIsaac	D. McIsaac
2	Q. Sure.	mind when you said "the circumstances of the
3	A. Okay.	transaction between Lehman and Barclays do not
4	Q. The first full sentence at the top of	change my opinions in this matter"?
5	the page, you say, "The circumstances of the	A. No. Basically that was it.
6	transaction between Lehman and Barclays do not	Q. With respect to the timing, what was
7	change my opinions in this matter."	your understanding of the circumstances?
8	What circumstances were you referring	A. I believe that it was negotiated in
9	to in that sentence?	a -- it didn't have, you know, three or four
10	A. The timing of everything happening,	months of negotiations, as far as I know. It
11	the -- I think Mr. Leitner was talking about how	was done fairly quickly, although I don't know
12	much time, you know, it took the quickness of	how much time and how much due diligence was
13	the negotiations.	done along the way.
14	Q. Any other circumstances that you	Lehman had been in trouble for a
15	were --	while, so I'm assuming a lot of firms were doing
16	A. No. I mean, the marketplace, you	some things, reviewing it to determine, you
17	know, everything that was happening at the time.	know, if there was a, you know, a good place to
18	Q. Anything other than the timing and the	go in and buy and, you know, there possibly was
19	marketplace that you were -- that you had in	the Lehman executives might have been shopping
20	mind when you said the circumstances of --	the firms. I don't know what happened, but I do
21	A. No, I think just the market, what was	know that a lot of things happened fairly
22	happening in the market at the time --	quickly.
23	I'm sorry.	Q. Were you assuming that Barclays had
24	Q. Are there any circumstances other than	plenty of time to do due diligence before
25	the timing and the marketplace that you had in	settling on the terms of the transaction it was

Page 94	Page 95
1 D. McIsaac	1 D. McIsaac
2 willing to enter into?	2 Q. What was that number?
3 MR. OXFORD: Objection to the form.	3 A. 3 to 5 billion.
4 A. I don't know how much time Barclays	4 Q. What, in your opinion, would be a
5 had to do due diligence. I don't know how long	5 typical amount of time for an entity to take
6 they were talking to Lehman and what information	6 doing due diligence on an acquisition the size
7 they had.	7 of this one?
8 And they were buying pretty much the	8 MR. OXFORD: Objection to the form.
9 whole entity, so, you know, it's not like they	9 A. I don't know how much time it would
10 had to do due diligence on certain things. It	10 take. They ended up buying certain businesses,
11 was a viable entity. It wasn't capital -- it	11 the customers' businesses, they bought assets
12 had adequate capital. You know, it didn't	12 like the buildings, things of that nature, and
13 appear that they were buying the broker-dealer,	13 they bought some positions. How much time, I
14 that there was that much of a concern around it.	14 don't know. I don't know how much time they
15 The customers were the customers. I don't know	15 spent knowing what was going on.
16 if there was any major concern on the customers	16 In the Lehman case, you know, Lehman
17 they had.	17 was not in, from what I understand, capital,
18 Q. Do you have an understanding of what	18 severe capital -- it was a liquidity crunch, and
19 the value of the entity was that Barclays was	19 Lehman was having problems getting the
20 acquiring?	20 information, getting the money they needed to
21 MR. OXFORD: Objection to the form.	21 support their assets. It didn't mean they
22 A. I believe if I looked at the August	22 didn't have good assets, it didn't mean the
23 Focus that was not filed, it showed a net -- a	23 business was crumbling, it just meant they were
24 net equity of I want to say 3 to 5 billion, if I	24 having a liquidity crunch.
25 remember properly, correctly.	25 I worked at Drexel. I saw what
Page 96	Page 97
1 D. McIsaac	1 D. McIsaac
2 happened to Drexel. It didn't necessarily mean	2 not a quant. I don't, you know, determine the
3 the broker-dealer had a problem. There was	3 value what risk for a firm. I understand what
4 illiquidity at the parent company, and that	4 assets are risky, what assets are not risky at a
5 trickles down.	5 firm, what businesses are risky, what businesses
6 Q. Do you mean to suggest that there was	6 are not risky, and I think, you know, in a firm
7 not a significant amount of risk that Barclays	7 of this size, it was a top, you know, three or
8 was encountering in acquiring this business?	8 four broker-dealer in the country for a long
9 MR. OXFORD: Object to the form.	9 period of time. So, yes, there were risks
10 A. I didn't say there wasn't a	10 there, but I think they were quantifiable.
11 significant amount of risk. I think there was a	11 Q. Do you know how long it would take to
12 discernible amount of risk. I think that buying	12 assess the risk profile in a set of equities
13 customer positions, customer business, not that	13 positions and options positions that was \$70
14 risky a business. Looks like they didn't buy	14 billion on the long side and \$69 billion on the
15 the prime broker, which would have been the more	15 short side?
16 risky of the customer businesses.	16 MR. OXFORD: Object to the form.
17 Futures clearing is not what I would	17 A. I don't think equities were the total
18 consider a very risky business. They bought	18 70 and 69. I think there were a portion of
19 certain assets, again, not everything that was	19 that. I think a large portion of that inventory
20 what I consider ultimately, you know, extremely	20 was government securities.
21 risky.	21 Q. Do you know how much government
22 Q. You're not an expert in risk	22 securities were in that versus equities versus
23 management or risk assessment; is that right?	23 exchange-traded derivatives?
24 MR. OXFORD: Objection to the form.	24 A. I believe at one point in time I saw
25 A. General knowledge of risk I have. I'm	25 something that sort of broke it down, but I

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1 D. McIsaac	1 D. McIsaac
2 don't remember exactly, but I believe equities	2 Q. Could they have decided to sell to a
3 were probably maybe 10 billion range.	3 different entity?
4 Q. Would you have experience that would	4 A. I'm sure they could have.
5 qualify you to assess the risk profile	5 Q. Could you pull Exhibit 442 out.
6 associated with a set of positions of that size?	6 That's the sale hearing transcript.
7 MR. OXFORD: Object to the form.	7 A. Uh-huh.
8 A. On a daily basis they are required to	8 Q. And turn to page 101.
9 maintain capital. They have to assess their	9 A. Yes.
10 capital every day. Part of their capital is	10 Q. If you read the first three paragraphs
11 assessing the risk. They were on a daily basis	11 or, you know, if you need to read a little bit
12 assessing the risk of their capital. You could	12 more to get context.
13 have easily used that information to determine	13 (Document review.)
14 where the risk was and, you know, from that	14 A. Okay.
15 standpoint, yes, determine the risk. When I	15 Q. In the second paragraph, it says,
16 file reports, I'm looking at the risk of the	16 "And, yet, he would say nobody has expressed an
17 firm.	17 interest to step into the shoes of -- excuse me,
18 Q. When you described the circumstances	18 step into the shoes of Barclays, your Honor."
19 of the transaction between Lehman and Barclays	19 The next paragraph says, "Lehman has not
20 on page 7 of your report, did you consider among	20 received any other interest since the
21 those circumstances the options that Lehman had	21 commencement of the Chapter 11 cases." And it
22 to the deal with Barclays?	22 goes on to say, "If Lehman was approached by
23 MR. OXFORD: Object to the form.	23 another potential buyer that he would consider
24 A. The options that Lehman had? I guess	24 the offer, provided that the company had
25 Lehman could have decided to sell or not sell.	25 sufficient liquidity to operate the business
Page 100	Page 101
1 D. McIsaac	1 D. McIsaac
2 without jeopardizing customer accounts. That	2 that fashion.
3 has not happened, your Honor. So it is almost	3 Q. Do you agree that the court is being
4 academic." Do you see that?	4 told at the September 19th sale hearing that it
5 A. Yes, I do.	5 is almost academic for Lehman to find another
6 Q. Had you read this testimony in	6 potential buyer at that point?
7 preparing for your -- or, in preparing your	7 A. That's what it looks like here, yes,
8 expert report?	8 but I --
9 A. I read this report in the -- when I	9 Q. And if you --
10 first started working with the Trustee regarding	10 A. Excuse me. But it also says they
11 the motion, the motion on the 3-3.	11 weren't marketing the firm in the first
12 Q. You testified a moment ago that you	12 paragraph on that page. So maybe if they did,
13 were sure Lehman could have sold the assets to a	13 they might have been able to find other buyers.
14 different buyer. Does this refresh your	14 Q. Okay. Can you read the second
15 recollection at all on the circumstances that	15 paragraph for me? "That notwithstanding the
16 Lehman was facing at the time?	16 lack of a specific program for marketing, the
17 A. This says they have no buyers. It's	17 sale of Lehman's broker-dealer business has been
18 Chapter 11. The Fed was providing them with	18 known worldwide. And, yet, he would say nobody
19 liquidity earlier in the week before Barclays	19 has expressed an interest to step into the shoes
20 stepped into the shoes. The Fed could have	20 of -- excuse me, step into the shoes of
21 continued to provide liquidity while they were	21 Barclays, your Honor."
22 looking for another purchaser.	22 A. Uh-huh.
23 That has happened before. If they	23 Q. Do you see that?
24 stepped in the shoes once before, I assume	24 A. Yes.
25 things could have been done, still been done in	25 Q. Do you agree that the speaker in this

<p style="text-align: right;">Page 102</p> <p>1                   D. McIsaac</p> <p>2 testimony is suggesting that they were not able</p> <p>3 to find another buyer for the business?</p> <p>4           A. No, I believe he's saying that it was</p> <p>5 known that the business might be for sale and</p> <p>6 nobody else has stepped up, but I believe the</p> <p>7 first paragraph says that they were not going</p> <p>8 out and marketing the sale of the business.</p> <p>9           Q. Do you have any understanding of why</p> <p>10 they weren't going out and marketing the</p> <p>11 business?</p> <p>12          A. No, I do not.</p> <p>13          Q. Could it be because they didn't have</p> <p>14 time to market the business because the</p> <p>15 transaction needed to close by the following</p> <p>16 Monday?</p> <p>17          A. This says the business has been known</p> <p>18 worldwide, so I don't know why it had to</p> <p>19 close -- I don't know what happened that made it</p> <p>20 have to close within a week's period.</p> <p>21          Q. Okay.</p> <p>22          A. If I looked at the financial</p> <p>23 statements that were not filed but prepared, it</p> <p>24 looked like they had adequate capital for the</p> <p>25 broker-dealer.</p>	<p style="text-align: right;">Page 103</p> <p>1                   D. McIsaac</p> <p>2           Q. Okay. Can you turn to page 73. If</p> <p>3 you review where the court asks a question in</p> <p>4 the middle of the page, "In order for this</p> <p>5 transaction to be optimally closed from the</p> <p>6 perspective of SIPC, when should it close? Does</p> <p>7 it need to close this weekend before the markets</p> <p>8 open on Monday?"</p> <p>9           A. I'm sorry, I lost where you're</p> <p>10 reading.</p> <p>11          Q. Page 73.</p> <p>12          A. Yes, I'm on 73. I see, "The Court:</p> <p>13 Let me ask a question."</p> <p>14          Q. Oh, the next statement.</p> <p>15          A. I'm sorry.</p> <p>16                    (Document review.)</p> <p>17          A. Uh-huh. Okay.</p> <p>18          Q. So you see where Mr. Caputo says to</p> <p>19 the court, in response to the court's question,</p> <p>20 "As soon as possible it needs to close. The</p> <p>21 sooner the better." Do you see that?</p> <p>22          A. Yes.</p> <p>23          Q. On the following page, the court asks,</p> <p>24 "Would it be your position on behalf of your</p> <p>25 client that, assuming the transaction, the sale</p>
<p style="text-align: right;">Page 104</p> <p>1                   D. McIsaac</p> <p>2 transaction that has been proposed to me today</p> <p>3 is approved, that the approval should happen</p> <p>4 before the close of today's hearing? In other</p> <p>5 words, we should stay here as late as we need to</p> <p>6 in order to get this done?" And Mr. Caputo</p> <p>7 says, "Yes, your Honor. That would be our</p> <p>8 recommendation." Do you see that?</p> <p>9          A. Yes.</p> <p>10         Q. Does this suggest to you that the</p> <p>11 transaction under contemplation did not need to</p> <p>12 close by Monday, September 22, 2008?</p> <p>13         A. I believe in the prior response by Mr.</p> <p>14 Caputo he said as soon as possible, and nothing</p> <p>15 was forcing Barclays to close this agreement.</p> <p>16 They did not have to do it if they didn't think</p> <p>17 they had done sufficient due diligence to -- to</p> <p>18 mandate a purchase of an asset like this.</p> <p>19         Q. Would you agree that at this sale</p> <p>20 hearing, which you read the transcript of, the</p> <p>21 parties were telling the court that it was</p> <p>22 critical to get this deal done within a matter</p> <p>23 of days?</p> <p>24         MR. OXFORD: Object to the form.</p> <p>25         A. I believe that's what was said here.</p>	<p style="text-align: right;">Page 105</p> <p>1                   D. McIsaac</p> <p>2 I don't -- I haven't read anything here, or I'd</p> <p>3 have to go back and read the whole thing, of</p> <p>4 what Barclays was saying why it would be</p> <p>5 critical for Barclays to get it done.</p> <p>6         Q. Do you believe that you are in a</p> <p>7 better position than the parties who were</p> <p>8 negotiating this deal and representing it to the</p> <p>9 court to determine the urgency of the closing of</p> <p>10 this transaction?</p> <p>11         MR. OXFORD: Object to the form.</p> <p>12         A. No, I think the urgency was on</p> <p>13 Lehman's side, not necessarily on Barclays'</p> <p>14 side. Barclays, if they didn't feel they had</p> <p>15 done enough due diligence and didn't feel they</p> <p>16 had adequate time to review it, didn't have to</p> <p>17 go through with it at that point in time.</p> <p>18         Q. Would you agree that in a transaction</p> <p>19 where one party has an urgency to complete a</p> <p>20 deal and another party doesn't, that there is a</p> <p>21 disparity in bargaining power as between those</p> <p>22 two entities?</p> <p>23         MR. OXFORD: Objection.</p> <p>24         A. Yes, but I'm not sure which way. If I</p> <p>25 don't sell it, what happens? I'm out of</p>

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<p>1 D. McIsaac  2 business. If I sell it, I'm still out of  3 business.</p> <p>4 So if the parent company is selling  5 the business or if the broker-dealer, they're  6 selling the business, they have a decision to  7 whether or not they sell it or not sell it. You  8 know, this isn't a sale where I'm trying to sell  9 something and, you know, just get rid of some  10 bad assets and go on.</p> <p>11 Q. And we saw earlier that the OCC had  12 threatened to liquidate LBI's accounts if it  13 didn't close this transaction by the 22nd of  14 September; is that right? Do you recall that?</p> <p>15 A. Yes, but the one thing the OCC said  16 they would liquidate was that the customer and  17 proprietary or just the customer -- just  18 proprietary accounts?</p> <p>19 Q. Sure, we can look at the exhibit  20 together. It was Exhibit 630.</p> <p>21 A. Uh-huh.</p> <p>22 Q. And it was on the second page under  23 paragraph 3, and it says, "OCC would need to  24 immediately liquidate and close out the LBI  25 accounts, and is preparing to do so."</p>	<p>1 D. McIsaac  2 A. Right, but I, after -- I don't  3 remember which -- I think you showed me this and  4 then you showed me something from the CME, and  5 the CME just liquidated the proprietary  6 accounts. It didn't liquidate the customers.</p> <p>7 Q. The OCC wasn't drawing a distinction  8 in that, do you see that?</p> <p>9 A. Well, I don't know if they were -- it  10 says "the accounts," so I'm assuming they meant  11 all, but it looks like, you know, they could  12 have drawn the same distinction that the CME did  13 and just liquidate the proprietary business if  14 they were concerned.</p> <p>15 Q. They could have?</p> <p>16 A. Yes.</p> <p>17 Q. But that's not what they're indicating  18 in this paragraph, would you agree?</p> <p>19 A. That's not what it looks like the  20 counsel was stating.</p> <p>21 Q. If the Lehman Trustee believed that a  22 liquidation of the OCC accounts would result in  23 a depletion of all of the posted margin, would  24 it have been rational for the LBI Trustee to  25 agree to transfer those accounts to Barclays in</p>
Page 108	Page 109
<p>1 D. McIsaac  2 exchange for the posted margin?</p> <p>3 MR. OXFORD: Objection to the form.</p> <p>4 Assumes facts not in evidence.</p> <p>5 A. If they looked at it and I guess  6 assumed that they would lose whatever the number  7 was, let's say \$2 billion, or transferred  8 something like \$2 billion, yes, it would make, I  9 guess, sense to do it or, you know, if there was  10 a better good to be had by it, but I don't know  11 if that analysis was done. You said it was a  12 very short time, so I'm not sure if they had  13 time to analyze that.</p> <p>14 Q. If you turn in your report to page 6,  15 you say in paragraph 18 that, "In addition to  16 the net asset value, I would expect a purchaser  17 to pay a premium based on the anticipated  18 earnings of the clearing business." Do you see  19 that?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Would you continue to have that  22 expectation in a circumstance in which there was  23 only one purchaser willing to acquire a  24 business?</p> <p>25 A. I would guess their negotiating powers</p>	<p>1 D. McIsaac  2 would not be the same, but I would still expect  3 some payment for an ongoing business that was  4 going to reap benefits for the purchaser.  5 Certainly the purchaser would want to get it for  6 nothing. I think the seller would want to get  7 some value for the assets they were selling.</p> <p>8 Q. But as you said, if the seller  9 believed that it wasn't going to get value in  10 the alternative, then it would have been  11 rational to sell it for nothing in order to  12 preserve the customer positions; is that right?</p> <p>13 MR. OXFORD: Object to the form.</p> <p>14 A. I don't think I said that.</p> <p>15 I'm sorry, could you read back my -- I  16 don't think I said that.</p> <p>17 Q. Earlier I asked you the question: "If  18 the Lehman Trustee believed that a liquidation  19 of the OCC accounts would result in a depletion  20 of all of the posted margin, would it have been  21 rational for the LBI Trustee to agree to  22 transfer those accounts to Barclays in exchange  23 for the posted margin?" And you said, "If they  24 looked at it and I guess assumed that they would  25 lose whatever the number was, let's say \$2</p>

<p style="text-align: right;">Page 110</p> <p>1                   D. McIsaac</p> <p>2 billion, or transferred something like \$2</p> <p>3 billion, yes, it would make, I guess, sense to</p> <p>4 do it or, you know, if there was a better good</p> <p>5 to be had by it, but I don't know if that</p> <p>6 analysis was done."</p> <p>7                   A. Yes.</p> <p>8                   Q. You also said, just for the sake of</p> <p>9 completeness, you said it was a very short time</p> <p>10 so I'm not sure if they had time to analyze</p> <p>11 that.</p> <p>12                   A. The Trustee in that case.</p> <p>13                   Q. Yes.</p> <p>14                   A. Yes.</p> <p>15                   Q. So the question and answer that I just</p> <p>16 asked you was, earlier I asked you the question,</p> <p>17 if the Lehman Trustee believed that a</p> <p>18 liquidation of the OCC accounts would result in</p> <p>19 a depletion of all of the posted margin, would</p> <p>20 it have been rational for the LBI Trustee to</p> <p>21 agree to transfer those accounts to Barclays in</p> <p>22 exchange for the posted margin, and you said</p> <p>23 that if they looked at it and, I guess, assumed</p> <p>24 that they would loose whatever the number was</p> <p>25 and so on.</p>	<p style="text-align: right;">Page 111</p> <p>1                   D. McIsaac</p> <p>2                   A. Right.</p> <p>3                   MR. OXFORD: Hold on. Hold on. Is</p> <p>4 there a question? You just have been</p> <p>5 reading from the record, Trish, which you're</p> <p>6 free to do, but if you could ask Mr. McIsaac</p> <p>7 a question, then he could answer it. I</p> <p>8 think that's the traditional way to go.</p> <p>9                   Q. If the Lehman Trustee believed that a</p> <p>10 liquidation of the OCC account would result in a</p> <p>11 depletion of all of the posted margin, would it</p> <p>12 have been rational for the LBI Trustee to agree</p> <p>13 to transfer those accounts to Barclays in</p> <p>14 exchange for that margin?</p> <p>15                   MR. OXFORD: Objection. Asked and</p> <p>16 answered.</p> <p>17                   You can answer it again.</p> <p>18                   A. I think I answered that question. You</p> <p>19 posed another question when you went back to</p> <p>20 read that.</p> <p>21                   Q. Unfortunately, I'm not able to find it</p> <p>22 online.</p> <p>23                   A. Okay. That's the question you asked</p> <p>24 that I didn't think was the same as that</p> <p>25 question.</p>
<p style="text-align: right;">Page 112</p> <p>1                   D. McIsaac</p> <p>2                   Q. Are acquirers, in your experience,</p> <p>3 generally willing to pay a premium if they are</p> <p>4 the only potential acquirer for a business and</p> <p>5 they know that going into a negotiation?</p> <p>6                   MR. OXFORD: Objection to the form.</p> <p>7                   A. I haven't been in negotiations where</p> <p>8 that would be the case, but you still would</p> <p>9 expect to pay some value for getting value. I</p> <p>10 would think the seller would want some value.</p> <p>11                   Q. But a premium is valued -- what do you</p> <p>12 define a premium to mean?</p> <p>13                   MR. OXFORD: Object to the form.</p> <p>14                   A. In my experience, you bought</p> <p>15 businesses and paid a premium based on how much</p> <p>16 you believe that that business will earn for you</p> <p>17 over the next few years, and then that's the</p> <p>18 base price plus you pay the net asset value of</p> <p>19 the business you're buying if you're just buying</p> <p>20 bits and pieces of the business.</p> <p>21                   So you pay a premium based on, you</p> <p>22 know, potential benefits to your firm. I</p> <p>23 believe in some of the pages I was reading</p> <p>24 through here in the futures world, I think</p> <p>25 people doing the due diligence believed that</p>	<p style="text-align: right;">Page 113</p> <p>1                   D. McIsaac</p> <p>2 they would make \$250 million in revenues over</p> <p>3 the next year. So there's a lot of value there,</p> <p>4 so maybe they saw value where other people</p> <p>5 didn't.</p> <p>6                   Q. And would a reasonable -- would a</p> <p>7 rational acquirer be willing to pay premium if</p> <p>8 it believed paying a premium wasn't necessary to</p> <p>9 close the deal?</p> <p>10                   MR. OXFORD: Object to the form.</p> <p>11                   A. I would assume they would try to get</p> <p>12 value for nothing if they could. So if you're</p> <p>13 saying would they pay a premium if they didn't</p> <p>14 have to, that would be negotiated and whether or</p> <p>15 not the seller would be willing to sell it for</p> <p>16 that price.</p> <p>17                   Q. Can you turn to page 23 of your</p> <p>18 report, please? Actually, if you could start at</p> <p>19 page 22. I'd like to ask you some questions</p> <p>20 about paragraphs 44 -- 54 and 55.</p> <p>21                   (Document review.)</p> <p>22                   A. Okay.</p> <p>23                   Q. In these two paragraphs you're talking</p> <p>24 about the proprietary options positions that LBI</p> <p>25 held in accounts at the OCC; is that right?</p>

	Page 114	Page 115
1	D. McIsaac	D. McIsaac
2	A. Yes.	MR. OXFORD: Object to the form of the
3	Q. At the end of paragraph 55, you say,	question.
4	"Certainly a rational seller would not include	A. I would expect the seller to look at
5	margin in a deal unless it was being compensated	the portfolio of assets that they were selling
6	dollar for dollar." Do you see that?	and to get the value for the portfolio of
7	A. Uh-huh.	assets. So if they were selling long positions
8	Q. Can you explain what you mean by	and short positions, I would expect them to get
9	"compensated dollar for dollar"?	the net asset value for that, and if the buyer
10	A. They were giving other assets and I	wanted the margin that was posted in addition, I
11	would assume they would be compensated for the	would expect them to get the net asset value for
12	assets. So if the value of the assets they were	the margin.
13	giving was \$100, I would expect them to be	
14	compensated \$100.	
15	The deal was to buy the portfolio of	Q. Just so that I understand your
16	assets, not the margin that's posted to make	opinion, so if the positions in an account are
17	sure that the firm complies with its obligations	worth negative a billion dollars on net, and the
18	to the OCC.	margin posted in an account were a billion
19	Q. So if there was, for example, a	dollars, are you suggesting that it would have
20	billion dollars in the proprietary options	been rational for the Trustee to transfer the
21	account posted as margin with the OCC, you	account with the margin because they were
22	believe that it would have been irrational for	offsetting positives and negatives?
23	the Trustee to agree to transfer that account to	MR. OXFORD: Object to the form.
24	Barclays for anything less than that same	Misstates the witness's testimony.
25	amount?	You can answer again.
	Page 116	Page 117
1	D. McIsaac	D. McIsaac
2	net asset value of the portfolio of assets,	dollar-for-dollar compensation for the posted
3	which was the long positions and the short	margin?
4	positions. And I don't look at it just as the	MR. OXFORD: Objection to the form.
5	options positions, I'd look at it as the whole	A. I don't think so, because if they were
6	inventory positions that they were purchasing,	getting net asset value, then you'd be almost
7	and they would pay value for what they were	providing the downside protection for the
8	buying. If you were to include the posted	acquirer.
9	margin, I would expect to pay extra value for	Q. And the net asset value in the terms
10	that.	of this transaction was what?
11	Q. Dollar-for-dollar extra value?	MR. OXFORD: Object to the form.
12	A. That's where I would start at least,	A. I believe there was 40 something
13	yes.	billion dollars of assets, less than that in a
14	Q. Would it be irrational to accept	repo liability that was assumed by Barclays, I
15	anything less than dollar-for-dollar	guess, and the long option value that I thought
16	compensation for the posted margin?	was about \$300 million.
17	MR. OXFORD: Object to the form.	Q. So you are excluding from your
18	A. That would be at the point in time you	equation the negative value of the LBI affiliate
19	would negotiate what you want to sell it for. I	positions that were in the firm account at the
20	would think it would be a negotiating point and	OCC?
21	it would be expressed in the contracts what you	A. I believe they weren't buying the
22	were buying and what you were receiving and how	affiliates business. That's what I've seen. So
23	much you were paying for it.	I thought they were negotiating to buy LBI's
24	Q. Would it be rational for LBI to	business and not the affiliates positions.
25	negotiate for compensation less than	Q. They were taking settlement

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1 D. McIsaac	1 D. McIsaac
2 responsibility for the affiliate positions as	2 Q. Would it be rational for the Trustee
3 well, you agree with that?	3 to agree to transfer the posted margin that
4 A. From the TAA, yes.	4 secured those positions in exchange for Barclays
5 Q. Where do you think Barclays was going	5 taking on the exposure for those positions?
6 to turn to recover the losses on the short	6 MR. OXFORD: Objection to the form.
7 affiliate positions in that account?	7 Asked and answered.
8 MR. OXFORD: Object to the form.	8 You can answer again.
9 A. I don't know where they would turn.	9 A. I don't think it would have been to
10 I'm not sure why they would have assumed them.	10 transfer \$2 billion of margin to cover a
11 Q. You saw that they assumed settlement	11 billion-dollar loss. I don't think you would
12 responsibility for all of the positions at the	12 transfer that much, no.
13 OCC, correct?	13 Q. How about 1 billion, would that have
14 A. I see that they assumed it, yes.	14 been rational for the Trustee to transfer?
15 Q. Okay. Would it have been rational for	15 A. It might have been.
16 Barclays to assume settlement responsibility for	16 MR. OXFORD: Object to the form.
17 those positions knowing that LBI was in SIPC	17 THE WITNESS: Sorry.
18 proceedings and would not be able to reimburse	18 Q. It might have been?
19 it for the costs of liquidating those positions?	19 A. It might have been. At that point in
20 MR. OXFORD: Object to the form.	20 time, if they negotiated it and -- and, you
21 A. I think it would have been rational to	21 know, that's what the parties decided.
22 negotiate what you were doing with those	22 Q. So it's not your opinion that it would
23 positions and, if you had to take over clearance	23 have been irrational under any circumstances for
24 and settlement of them, negotiate how you were	24 Lehman or the LBI Trustee to transfer posted
25 going to be remunerated for that.	25 margin to Barclays in exchange for taking
Page 120	Page 121
1 D. McIsaac	1 D. McIsaac
2 settlement responsibility for the affiliate	2 what has been marked as Exhibit 687.
3 positions; is that right?	3 (Exhibit 687, Trustee's Memorandum in
4 MR. OXFORD: Object to the form.	4 Further Support of His Motion for Relief
5 A. I believe in my report I talked about	5 Pursuant to the Sale Orders or,
6 the proprietary positions. If they're assuming	6 Alternatively, For Certain Limited Relief
7 affiliate clearance and settlement of affiliates	7 under Rule 60(B) and in Opposition to the
8 positions, that would be something they should	8 Motion of Barclays Capital Inc. to Enforce
9 negotiate. You know, the parties there would	9 the Sale Orders and Secure Delivery of all
10 negotiate it and whatever they thought was valid	10 Undelivered Assets, marked for
11 would be valid.	11 identification, as of this date.)
12 Would it be out of the realm to say,	12 Q. If you could turn to page 60. In
13 yes, give me the market value of that? No.	13 paragraph 136, the last two sentences, the
14 Q. Would that be a rational resolution,	14 Trustee says in his brief, "For example, LBI
15 to give them the market value of that?	15 could have agreed to transfer to Barclays the
16 MR. OXFORD: Object to the form.	16 minimum margin assets that the OCC required to
17 A. It would be rational to say this is	17 secure LBI's liabilities to the OCC for LBI's
18 the cost of it, sure, or, you know, we'll	18 proprietary positions. Such a transfer arguably
19 liquidate it, leave it in -- don't take those	19 would have cost LBI little because, in any
20 positions, don't take that account.	20 event, LBI could not have withdrawn the minimum
21 I'm sure it could have been negotiated	21 margin assets required by the OCC to secure
22 with the OCC to transfer the customer accounts	22 LBI's open positions." Do you see that?
23 separate from the proprietary accounts if that	23 A. Yes, I do.
24 was -- if that was everybody's desire.	24 Q. Do you agree with that statement?
25 Q. If you could turn -- I'm showing you	25 A. Can I read the whole two paragraphs?

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1	D. McIsaac	1	D. McIsaac
2	Q. Uh-huh.	2	see that?
3	(Document review.)	3	A. Yes.
4	MR. OXFORD: Okay. And Mr. McIsaac,	4	Q. Do you agree with that?
5	you should feel free, of course, not to just	5	A. In the context here, yes.
6	read those paragraphs, but the whole of the	6	Q. What do you mean in the context here?
7	section to which Ms. Bloomer directs you.	7	A. There's four paragraphs here
8	(Document review continues.)	8	explaining things they could have been done if
9	A. Okay. Now, I'm sorry, I've read it	9	it was negotiated. All I've said all along is
10	now, so ...	10	this was something that should have been
11	Q. Okay. Directing you again to the last	11	negotiated and decided upon by the parties prior
12	two sentences of paragraph 136, do you agree	12	to consummating the trade of the sale.
13	with the statement that, "LBI could have agreed	13	Q. You said that the Trustee would have
14	to transfer the minimum margin assets that OCC	14	been irrational to agree to transfer the posted
15	required to secure all of the liabilities to the	15	margin for anything less than dollar for dollar,
16	OCC for LBI's proprietary positions"?	16	isn't that right?
17	A. In context, it says, for example, they	17	A. For the proprietary --
18	could have done it. They have also said that it	18	MR. OXFORD: Object to the form.
19	could have been negotiated, so this was just one	19	Misstates the witness's testimony.
20	example of things that could have occurred.	20	You can answer.
21	Q. And in the next sentence, it says,	21	A. I was talking about proprietary
22	"Such a transfer arguably would have cost LBI	22	assets. I don't know if this was talking about
23	little because, in any event, LBI could not have	23	all the proprietary assets. The proprietary
24	withdrawn the minimum margin assets required by	24	assets at the OCC, my understanding, were net
25	the OCC to secure LBI's open positions." Do you	25	long positions.
Page 124		Page 125	
1	D. McIsaac	1	D. McIsaac
2	Q. This says that the transfer would have	2	proprietary accounts.
3	cost -- would arguably have cost LBI little	3	Q. Outside of the OCC, could LBI have
4	because LBI could not have withdrawn the minimum	4	withdrawn the minimum margin assets required by
5	margin assets required by the OCC to secure	5	other clearing organizations or clearing brokers
6	LBI's open positions.	6	to secure LBI's open positions?
7	Could the Trustee have withdrawn the	7	A. When you say "outside the OCC," what
8	minimum margin requirements required by the OCC	8	are you referring to? A little bit -- it's a
9	to secure the affiliate positions in the firm	9	very broad statement outside --
10	account?	10	Q. Sure. I'll give an example. Your
11	A. No, I do not believe so. Because	11	understanding -- do you understand that LBI had
12	they're in the account, they could not withdraw	12	a customer account open at the CME at the time
13	any of the minimum margin requirements.	13	the transaction closed?
14	Q. Could LBI have withdrawn the minimum	14	A. Yes.
15	margin assets required by the OCC to secure	15	Q. Okay. Could LBI have withdrawn the
16	LBI's customer accounts?	16	minimum margin assets required by the CME to
17	MR. OXFORD: Object to the form. Do	17	secure LBI's customer accounts?
18	you have a specific timeframe in mind,	18	A. No.
19	Trish?	19	I'm sorry.
20	MS. BLOOMER: No, I don't.	20	MR. OXFORD: Sorry. Withdrawn.
21	A. I don't think they could have	21	A. No.
22	withdrawn any of the minimum margin requirements	22	Q. And at any other place where there
23	at that point in time.	23	were open customer or proprietary accounts could
24	Q. For the customer accounts either?	24	LBI have withdrawn the minimum margin assets
25	A. For the customer accounts or the	25	required to secure those open positions?

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1 D. McIsaac	1 D. McIsaac
2 A. I don't believe they could have.	2 their obligations. So, transferring those, they
3 You're making it broad, so I don't want to make	3 already got the margin that was provided by the
4 a general statement, but my understanding, no,	4 customers to support that.
5 they could not have. But it didn't mean they	5 Q. I'm showing you what has been marked
6 had to give them away either.	6 as Exhibit 659A. If you could review the e-mail
7 Q. Okay. The sentence says that "a	7 and the first attachment to the e-mail.
8 transfer arguably would have cost little because	8 Specifically, I would direct your attention to
9 LBI could not have withdrawn the minimum margin	9 the first full paragraph on page 2 of the
10 assets required to secure the positions."	10 letter.
11 Would you agree that that same	11 (Document review.)
12 sentence applies not just to proprietary, but to	12 A. You said the first two paragraphs,
13 any accounts for which LBI could not withdraw	13 right?
14 the minimum margin assets required?	14 Q. I said the first full paragraph.
15 MR. OXFORD: Object to the form.	15 A. I'm sorry, I read the first two, okay.
16 You can answer.	16 Q. On page 2.
17 A. I would say the minimum margin	17 A. Oh, on page 2. Okay. Sorry.
18 requirements as it relates to the exposure of	18 (Document review.)
19 the positions would be transferred as long as	19 A. Yes, okay, I've read those paragraphs
20 they were not -- did not get adequate protection	20 that start "pursuant to."
21 elsewhere. So in the second part where they	21 Q. Okay. Now, in this paragraph
22 talk about the customers' margin positions,	22 Barclays' counsel is writing to the CFTC about
23 the -- Barclays in the transfer of the	23 the customer accounts that LBI is going to be
24 customers' accounts I believe had adequate	24 transferring. Do you understand that reference
25 protection against the customers fulfilling	25 in the context of this letter to be referring to
Page 128	Page 129
1 D. McIsaac	1 D. McIsaac
2 the futures customer accounts?	2 Q. Uh-huh.
3 A. Yes.	3 A. In the futures sense, even if you're
4 Q. The second sentence of that paragraph	4 in deficit, the firm -- the FCM is required to
5 says, "Some of these accounts are accounts that	5 make up that deficit to protect all the
6 contain no open commodity positions and accounts	6 customers that are not in deficit. So they
7 that are in deficit, within the meaning of	7 would have to lock up additional collateral.
8 Regulations 190.06(e)(1)(iv) and (v)," and then	8 They're responsible for all the customers that
9 "17 C.F.R. Section 190.06(e)(1)(iv) and (v),	9 they owe -- they have an obligation to where
10 respectively." Do you see that?	10 they owe them money or owe them net equity to
11 A. Yes.	11 cover them in their lockup. The deficits -- the
12 Q. What do you understand this to mean	12 customers or deficits, they would be required to
13 when it says that "some of these accounts are	13 top them off in the second secured calculation.
14 accounts that are in deficit"?	14 Q. The customers would be required to --
15 A. That would be accounts that had -- you	15 A. No, the firm would be required to top
16 had a receivable from the customer that exceeded	16 them off.
17 any assets he had on deposit with you as the	17 Q. And if the firm was required to top
18 firm.	18 off any deficits, is it your understanding that
19 Q. Okay. And you said in the answer to	19 that would constitute customer property to which
20 the last question that Barclays had adequate	20 Barclays was entitled under the terms of this
21 protection against the customers fulfilling	21 transaction even though it wasn't property
22 their obligations. Were you assuming that the	22 deposited by any customer?
23 customer margin accounts were not in deficit?	23 MR. OXFORD: Object to the form.
24 A. Are we talking about in the futures	24 A. The way the seg and secured
25 sense?	25 calculation works, you have a requirement on the

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<p>1 D. McIsaac  2 top and you have where the assets are on the  3 bottom. The requirement would add back to your  4 requirement that deficit. So you'd be required  5 to lock up all moneys owed to all customers.</p>	<p>1 D. McIsaac  2 MR. OXFORD: Yes.  3 THE WITNESS: I'm sorry.  4 Two things could have happened: They  5 could have decided not to take the customers  6 that were in deficit and had them  7 liquidated, liquidated them on the spot, and  8 they would have been topped up for that  9 potential loss by the firm making sure that  10 they covered the requirement which would  11 have been all the obligations to customers.</p>
<p>6 Q. Including money that the customers had  7 not deposited?</p>	<p>12 Q. I'm sorry, can you -- what was the  13 second option? You said two things could have  14 happened. I don't understand your answer. Can  15 you --</p>
<p>8 A. They would add it back.  9 MR. OXFORD: Object to the form.</p>	<p>16 A. They could have decided not to take  17 those customers.</p>
<p>10 Q. And when Barclays took over  11 responsibility for these accounts, did it  12 inherit those requirements?</p>	<p>18 Q. Okay.</p>
<p>13 MR. OXFORD: I object to the form.</p>	<p>19 A. Or, if they did take them, could have  20 liquidated their positions and closed them out.</p>
<p>14 A. Yes.</p>	<p>21 Q. If there was a margin deficit, were  22 they protected in the event of a liquidation to  23 the full extent of the exposure on the  24 positions?</p>
<p>15 Q. And if there were margin deficits in  16 the customer accounts, what protection did  17 Barclays receive in this transaction if it  18 didn't receive any of the LBI assets that were  19 held in those accounts, that were held in the  20 customer's segregated and secured accounts?</p>	<p>25 A. They would have --</p>
<p>21 MR. OXFORD: Object to the form.  22 Misstates his testimony. Assumes facts not  23 in evidence.</p>	<p>26 Page 132</p>
<p>24 THE WITNESS: I'm sorry, can I answer  25 or --</p>	<p>27 Page 133</p>
<p>1 D. McIsaac  2 MR. OXFORD: Object. Object to the  3 form.</p>	<p>1 D. McIsaac  2 entitled to the customer property that was held  3 by LBI to secure those customer positions?</p>
<p>4 A. Sorry. They would have had some  5 minimal exposure from the time that the market  6 closed on one day to the market opened on the  7 next to liquidate the positions.</p>	<p>4 A. And that customer property is what it  5 would be locked up as assets pertaining to the  6 customer. That's for the obligations of the  7 customer. So you start out with your net  8 customer balances, you add back any deficits  9 that aren't fully secured, and that's your  10 obligations to your customers. And that's what  11 they would get in a transfer.</p>
<p>8 Q. How do you know that the exposure is  9 minimal if you don't know the size of the margin  10 deficit?</p>	<p>12 Q. Okay. So they would get property in a  13 customer's seg and secured account that wasn't  14 necessarily a customer's property; is that  15 right?</p>
<p>11 A. The positions are marked to market  12 every day. You have protected all of the  13 clients who have -- that you owe money to. You  14 have locked up -- all of that money has been  15 locked up. Then you go and you would liquidate  16 those accounts.</p>	<p>16 A. No, it would be the customer's  17 property. The customers gave you \$100. You'll  18 return -- they -- you have to set aside that  19 \$100 for the customers.</p>
<p>17 Whatever the cost is, because it's  18 marked to market every day, you only have that  19 fraction of from the time the market closed to  20 the time the market opened and you were able to  21 liquidate to lose any money on the liquidation.  22 And you could make money on the liquidation.</p>	<p>20 Q. If the customer account is in a margin  21 deficit, does that mean you have a receivable as  22 opposed to actual cash in that account?</p>
<p>23 Q. But as the acquiring broker-dealer,  24 isn't it true that you're only, in your opinion,  25 under the structure of this transaction,</p>	<p>23 A. Yes. And but for the customers that  24 you owe moneys to, you have to lock up all of  25 that money. So if a customer gives you \$100 and</p>

<p style="text-align: right;">Page 134</p> <p>1                   D. McIsaac</p> <p>2 another customer is in deficit for \$50, you have</p> <p>3 to lock up \$100. So you would be transferring</p> <p>4 all the assets that belong to the customers.</p> <p>5                   You would then liquidate -- you would</p> <p>6 also transfer whatever assets the customer's in</p> <p>7 deficit because he may have securities -- he may</p> <p>8 have a receivable of \$20 and secured for \$10.</p> <p>9 You would have some security against it, but</p> <p>10 your exposure is only between the time of</p> <p>11 liquidation, from the close of the market to the</p> <p>12 open of the market to liquidate that account.</p> <p>13                   Q. And that size of that exposure would</p> <p>14 depend on the quantity and size of the customer</p> <p>15 positions as well as the market volatility; is</p> <p>16 that right?</p> <p>17                   A. It would depend on a lot of things.</p> <p>18 It also may be a very good receivable because</p> <p>19 maybe the customer went in deficit for a market</p> <p>20 move and he'll make -- he'll meet his call</p> <p>21 tomorrow morning.</p> <p>22                   Q. If the customer positions were to, on</p> <p>23 net, drop in value between the day of the</p> <p>24 closing and the following day, is it fair to say</p> <p>25 that Barclays was exposed to the full risk of</p>	<p style="text-align: right;">Page 135</p> <p>1                   D. McIsaac</p> <p>2 the amount of drop in value and did not receive</p> <p>3 protection against that risk from the customer</p> <p>4 property that it received?</p> <p>5                   MR. OXFORD: Object to the form.</p> <p>6                   Assumes facts not in evidence.</p> <p>7                   A. Are we talking about just the customer</p> <p>8 who's in deficit or are we talking about the</p> <p>9 whole customer?</p> <p>10                   Q. Any customer.</p> <p>11                   A. No, there would be no difference for</p> <p>12 the other customers because you have market</p> <p>13 movement and you make market calls. Customers</p> <p>14 are required to meet their margin calls every</p> <p>15 day. Usually, a firm will have excess margin</p> <p>16 there to cover themselves. If they lose money,</p> <p>17 they bring in money and you -- you use that</p> <p>18 money to pay the exchanges.</p> <p>19                   Q. And that assumes that the customers</p> <p>20 are creditworthy and pay their margin calls; is</p> <p>21 that right?</p> <p>22                   A. That assumes that the customers meet</p> <p>23 their margins calls. If they don't meet their</p> <p>24 margin call, you liquidate them.</p> <p>25                   Q. Would you agree that credit risk is</p>
<p style="text-align: right;">Page 136</p> <p>1                   D. McIsaac</p> <p>2 more substantial in a volatile market?</p> <p>3                   MR. OXFORD: Object to the form.</p> <p>4                   A. I think credit risk is dependent on</p> <p>5 who your counterparties are. I believe, from</p> <p>6 what I saw in the due diligence done by the</p> <p>7 Barclays people, that it was mainly</p> <p>8 institutional customers that were in their</p> <p>9 futures business. Based on that, I would tend</p> <p>10 to think that they would be viable</p> <p>11 counterparties to meet their obligations.</p> <p>12                   Q. Is credit risk greater in a recession</p> <p>13 than it is in a -- under stable market</p> <p>14 conditions?</p> <p>15                   MR. OXFORD: Object to the form.</p> <p>16                   A. The credit risk is dependent on the</p> <p>17 customer and the positions they have. They</p> <p>18 could be betting that the market goes down and</p> <p>19 making a ton of money.</p> <p>20                   So I don't know what the positions</p> <p>21 that the customers had, in what markets they</p> <p>22 were trading, and what effect that was happening</p> <p>23 at September 19 that would have affected</p> <p>24 individual customers' positions, you know, so</p> <p>25 there was I don't believe a recession on</p>	<p style="text-align: right;">Page 137</p> <p>1                   D. McIsaac</p> <p>2 September 19, but I don't know.</p> <p>3                   Q. Do you -- did you base your opinion on</p> <p>4 the understanding that there was not a recession</p> <p>5 as of September 19, 2008?</p> <p>6                   A. It doesn't matter to me if there was</p> <p>7 or wasn't or if we were or were not in a</p> <p>8 recession. People pay their bills when they're</p> <p>9 in a recession and when there's not a recession.</p> <p>10 These are not individual customers, primarily.</p> <p>11 These are institutions, from what I've</p> <p>12 understood.</p> <p>13                   Q. So it has no bearing on your opinion</p> <p>14 that the country was in a recession -- if the</p> <p>15 country were in fact in a recession at the time</p> <p>16 this transaction was negotiated?</p> <p>17                   A. It would matter what the customers had</p> <p>18 and the positions they had and who the customers</p> <p>19 were.</p> <p>20                   Q. Would it matter at all to your</p> <p>21 opinion, at all to your opinion, whether or not</p> <p>22 there was a recession at the time that this deal</p> <p>23 was negotiated in terms of assessing the risks</p> <p>24 associated with the transaction?</p> <p>25                   A. You assess the risk of the customers</p>

<p style="text-align: right;">Page 138</p> <p>1                   D. McIsaac    2 and the market environment at that point in time    3 and the customer's position. I don't know if a    4 recession has anything to do with the viability    5 of a futures customer paying their margin    6 requirements.</p> <p>7   Q. You just said you assess the risk of    8 the customers and the market environment at that    9 point in time. Are you agreeing that the market    10 environment at that point in time is relevant to    11 an assessment of the risks associated with a    12 transaction of the type that Barclays    13 consummated with Lehman Brothers in September of    14 2008?</p> <p>15    MR. OXFORD: Object to the form.</p> <p>16    A. The market environment in relation to    17 the positions that the customers had on. If the    18 market's going down and the customers were    19 betting that the market is going to go down,    20 they're not a credit risk. So you have to    21 analyze the customers, the types of positions    22 they are, their familiarity with the market, and    23 your belief on where the market goes and whether    24 or not you have adequate collateral.</p> <p>25    Q. Okay. I'm going to try to ask the</p>	<p style="text-align: right;">Page 139</p> <p>1                   D. McIsaac    2 question one more time, and if you could just    3 answer the question that I'm asking.    4                   Would it matter at all to your opinion    5 whether or not there was a recession at the time    6 that this deal was negotiated in terms of    7 assessing the risks associated with the    8 transaction? Would that matter to your opinion?</p> <p>9                   MR. OXFORD: Object to the form. It's    10 been asked and answered a number of times.    11                   You can answer it again.</p> <p>12                   A. I would not care if there was a    13 recession in analyzing individual customer's    14 ability to meet their obligations.</p> <p>15                   Q. Thank you.</p> <p>16                   MR. OXFORD: Trish, if you can let me    17 know when you think it's a good time to    18 break for lunch? It's 1.</p> <p>19                   MS. BLOOMER: Just like five more    20 minutes, if that's okay with everyone.</p> <p>21                   MR. OXFORD: If it's okay with Mr.    22 McIsaac, it's okay with me.</p> <p>23                   MS. BLOOMER: Okay. Thanks.</p> <p>24                   Q. Could you turn back in your expert    25 report to page -- oh, I'm sorry. Could you turn</p>
<p style="text-align: right;">Page 140</p> <p>1                   D. McIsaac    2 in the Trustee's brief, which was Exhibit --    3                   MR. OXFORD: 687.</p> <p>4    Q. 687.</p> <p>5    MS. BLOOMER: Thanks, Neil.</p> <p>6    Q. To page 60.</p> <p>7    A. Page 60.</p> <p>8    Q. We were talking earlier about the    9 sentence in the Trustee's brief in which they    10 say that a transfer to Barclays of the minimum    11 margin assets required by the OCC to secure    12 LBI's open positions would arguably have cost    13 LBI little. Do you recall earlier discussing    14 that?</p> <p>15    A. Yes.</p> <p>16    Q. Are you aware that the margin    17 requirements at the OCC were shifting by \$500    18 million a day during the week of September 15 on    19 multiple days?</p> <p>20    MR. OXFORD: Objection to form.</p> <p>21    Misstates --</p> <p>22    A. I believe --</p> <p>23    MR. OXFORD: -- the record.</p> <p>24    A. Sorry.</p> <p>25    I believe you showed me a document</p>	<p style="text-align: right;">Page 141</p> <p>1                   D. McIsaac    2 that showed it going up and then drastically    3 down on the 19th.</p> <p>4    Q. Perhaps we can look at that document.    5 I believe it was the declaration of Craig Jones.</p> <p>6    A. Right, Exhibit 1.</p> <p>7    Q. In Exhibit 1.</p> <p>8    Do you recall that between the 15th    9 and the 16th the margin requirement went up by    10 over \$500 million, do you see that?</p> <p>11    A. Yes, I do.</p> <p>12    Q. And then between the 17th and 18th --    13 well, between the 16th and the 17th it went up    14 another 45 million or so dollars, do you see    15 that?</p> <p>16    A. Uh-huh. Yes.</p> <p>17    Q. And then it goes up over \$600 million    18 between the 17th and the 18th?</p> <p>19    A. Yes.</p> <p>20    Q. So between the 15th and the 18th, you    21 see that the margin requirement increased by    22 over \$1.2 billion?</p> <p>23    A. Yes, I see that.</p> <p>24    Q. Okay. And then it dropped by    25 approximately \$400 million on that last day of</p>

<p>1 D. McIsaac</p> <p>2 the week, do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Would it have been rational for the</p> <p>5 Trustee, assuming he was aware of the swings in</p> <p>6 the margin requirements, to believe that it</p> <p>7 would have arguably cost LBI little to transfer</p> <p>8 even more than the minimum margin assets given</p> <p>9 the risk that those margin requirements could</p> <p>10 increase dramatically over the following day</p> <p>11 after the transaction?</p> <p>12 MR. OXFORD: Object to the form.</p> <p>13 Assumes facts not in evidence.</p> <p>14 A. I believe you would have to assess</p> <p>15 what your exposure was there, assess whether or</p> <p>16 not the margin requirements might have been</p> <p>17 inflated by the OCC for whatever reason, and</p> <p>18 determine what your potential risk or what you</p> <p>19 think the risk is and negotiate from there.</p> <p>20 Q. Regardless of whether the OCC's margin</p> <p>21 requirements were inflated or what the reason</p> <p>22 for them was, you agree that LBI couldn't</p> <p>23 withdraw anything beyond -- anything that would</p> <p>24 bring the posted margin below the minimum margin</p> <p>25 assets required, right?</p>	<p>1 D. McIsaac</p> <p>2 A. Correct.</p> <p>3 Q. And you see that the margin</p> <p>4 requirements increased by \$1.2 billion in a</p> <p>5 matter of four days during the week of September</p> <p>6 15, correct?</p> <p>7 A. I see that they increased and then</p> <p>8 decreased.</p> <p>9 Q. Would it be rational for a seller, in</p> <p>10 light of these margin requirement movements,</p> <p>11 during the week of September 15, 2008, to</p> <p>12 believe that there was a risk that the margin</p> <p>13 requirements would increase again substantially</p> <p>14 on September 22 and September 23?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 Assumes facts not in evidence.</p> <p>17 A. In light of triple-witching day, I</p> <p>18 don't know if -- if LBI was putting on</p> <p>19 additional positions during the week or the</p> <p>20 positions that would close out on Friday would</p> <p>21 have -- what impact they would have on the</p> <p>22 margin requirement.</p> <p>23 I can't answer a question of where I</p> <p>24 think the margin requirement is going to go</p> <p>25 without having any idea what the positions were</p>
<p>Page 144</p> <p>1 D. McIsaac</p> <p>2 and how they had them already covered. Maybe</p> <p>3 the margin requirement was on shorts that we had</p> <p>4 long positions already sitting in the account</p> <p>5 and they would have been covered.</p> <p>6 Q. Do you know how many positions were in</p> <p>7 the proprietary accounts at the OCC?</p> <p>8 MR. OXFORD: Object to the form. Do</p> <p>9 you have a particular day?</p> <p>10 MS. BLOOMER: On the 19th of</p> <p>11 September.</p> <p>12 A. I believe there were tens of thousands</p> <p>13 of positions in there that date that included</p> <p>14 the affiliates, subordinated affiliates</p> <p>15 accounts.</p> <p>16 Q. So if a Trustee were to want to</p> <p>17 assess -- or, if LBI, I apologize, were to want</p> <p>18 to assess the impact that the expiration weekend</p> <p>19 would have on the margin requirements, how long</p> <p>20 would it take the LBI -- LBI to conduct that</p> <p>21 analysis?</p> <p>22 MR. OXFORD: Object to the form.</p> <p>23 A. I would assume LBI, if their systems</p> <p>24 were like any other systems on the street, would</p> <p>25 have been able to analyze that fairly quickly.</p>	<p>Page 145</p> <p>1 D. McIsaac</p> <p>2 They -- they have risk systems that would</p> <p>3 quantify this and they would know what their</p> <p>4 exposure was as of close of business.</p> <p>5 MS. BLOOMER: I think this is probably</p> <p>6 a good time to take our break for lunch.</p> <p>7 MR. OXFORD: Okay. Thanks.</p> <p>8 THE VIDEOGRAPHER: The time is 1:05.</p> <p>9 This is the tape labeled number 3. We're</p> <p>10 going off the record.</p> <p>11 (Luncheon recess.)</p>

Page 146	Page 147
1 D. McIsaac	1 D. McIsaac
2 AFTERNOON SESSION	2 Q. On exchange-traded derivatives issues?
3 DANIEL McISAAC, resumed and	3 A. Yes.
4 testified further as follows:	4 Q. Yes?
5 THE VIDEOGRAPHER: This is the start	5 A. Yes.
6 of tape labeled number 4. The time is 2:05.	6 Q. If you could turn to the second page,
7 We're back on the record.	7 paragraph 6, and review that and let me know
8 EXAMINATION BY (Cont'd.)	8 when you've had a chance to look at it.
9 MS. BLOOMER:	9 (Document review.)
10 Q. Good afternoon.	10 A. Yes.
11 A. Good afternoon.	11 Q. Okay. In this paragraph, Mr. Clark
12 Q. I'm showing you a document that's been	12 says that the OCC options were not immediately
13 marked as Exhibit 648. This is a declaration	13 brought onto Barclays' systems, as the systems
14 that was submitted by Eric Clark. Are you	14 were not capable of incorporating the LBI OCC
15 familiar with this declaration?	15 options. Do you see that?
16 A. I believe I've seen it, yes.	16 A. Yes.
17 Q. And did you see it preparing for your	17 Q. Do you have any reason to doubt the
18 deposition today?	18 accuracy of that statement?
19 A. I think I might have seen it, but I	19 A. No, I do not.
20 don't recall if it was in preparing or not. But	20 Q. In the next sentence he says, "The
21 I know I've seen the declaration.	21 delay in moving the options on the Barclays'
22 Q. Do you believe you saw it -- do you	22 systems created difficulties for Barclays' Risk
23 believe you saw it prior to when you submitted	23 Management Team in terms of their ability to
24 your expert report?	24 manage the risk associated with these positions
25 A. Yes.	25 effectively during the interim period."
Page 148	Page 149
1 D. McIsaac	1 D. McIsaac
2 Do you see that?	2 relationship between losses on underlying
3 A. Yes.	3 positions, for example, and gains onto hedge
4 Q. Do you have any reason to doubt the	4 positions?
5 accuracy of that statement?	5 MR. OXFORD: Object to the form.
6 A. No, I do not.	6 A. I would assume, having them roll up
7 Q. Have you seen anything in the record	7 into a system, that you would be able to monitor
8 that suggests that Barclays did have the ability	8 both sides of the positions, be able to monitor
9 to manage the risk associated with these	9 the options as well as the equity into one
10 positions prior to the time it was able to	10 straight -- one flow-through system, for lack of
11 incorporate them onto its system?	11 better words.
12 MR. OXFORD: Object to the form.	12 Q. If Barclays were attempting to hedge a
13 A. I believe I did see something where	13 set of options positions, and those options
14 they were trying to risk-manage the positions	14 positions lost \$500 million in value over a
15 for a period of time and then turned them back	15 discrete period of time, would you consider an
16 to the Lehman traders to manage the risk.	16 effective hedge if the hedge positions that
17 Q. Okay. And do you believe that what	17 Barclays placed only gained \$150 million during
18 you saw led you to conclude that that risk	18 that same time?
19 management during that period of time was	19 A. I don't know if their objective was to
20 effective?	20 fully hedge the position. Most trading books do
21 MR. OXFORD: Object to the form.	21 not fully hedge because then there would be no
22 A. I don't know if I saw enough within	22 gain or loss unless you were just trying to play
23 that to determine if it was totally effective.	23 the -- the gain or loss when you put on the
24 Q. What would you consider to be an	24 contract. So most traders don't fully hedge
25 effective hedge program in terms of the	25 their positions.

<p style="text-align: right;">Page 150</p> <p>1                   D. McIsaac    2            But I don't know if that was    3    effective. Their goal might have been to only    4    hedge a portion of it.    5    Q. Assuming their goal was to fully hedge    6    the position, would you agree that a hedge that    7    only gained \$150 million against underlying that    8    lost \$500 million was an ineffective hedge?    9    MR. OXFORD: Object to the form.    10   Assumes facts not in evidence.    11   A. If you were trying to hedge the entire    12    portfolio and you put on hedges that didn't    13    replicate it, that would have been an    14    ineffective hedge.    15    Q. If you would turn in your report to    16    page 3 -- I'm sorry, page 4, sub-bullet 3 at the    17    top of the page. It says there that, "Any    18    ongoing market risk associated with the    19    proprietary exchange-traded derivatives that    20    Barclays acquired could be and was mitigated by    21    Barclays by hedging these positions." Do you    22    see that?    23    A. Yes.    24    Q. And then if you turn to page 7,    25    paragraph 22, you say, "I would assume that the</p>	<p style="text-align: right;">Page 151</p> <p>1                   D. McIsaac    2    purchaser would have anticipated that the short    3    exchange-traded derivatives positions would be    4    hedged by certain long equity positions in LBI's    5    total portfolio." Do you see that?    6    A. Yes.    7    Q. Are you familiar with the various    8    trading strategies that a broker-dealer could    9    undertake for a proprietary portfolio?    10   MR. OXFORD: Object to the form.    11   A. Somewhat, yes, sure.    12   Q. Are long equity positions the only    13    positions that would interact with    14    exchange-traded derivatives positions in terms    15    of the full portfolio?    16   MR. OXFORD: I'll object to the form    17    of the question.    18   A. Yes, I'm not sure really what the    19    question is. I'm not sure what you're --    20   Q. Is it possible that short    21    exchange-traded derivatives positions would be    22    hedged by anything other than long equity    23    positions in a broker-dealer's portfolio?    24   A. Yes.    25   Q. Can you give me an example?</p>
<p style="text-align: right;">Page 152</p> <p>1                   D. McIsaac    2    A. A short put might be hedged by a short    3    position in a portfolio. A short option could    4    be hedged by a long option. An index could    5    hedge a portfolio of a basket of other options.    6    Q. And could over-the-counter positions    7    also be used to hedge exchange-traded    8    derivatives positions?    9    A. I would tend to think normal course    10    would be to use exchange-traded derivatives to    11    hedge over-the-counter derivatives.    12    Q. Okay. And if you were to have    13    purchased an exchange-traded derivatives    14    position in order to hedge an over-the-counter    15    position, would the acquirer of the    16    exchange-traded derivatives position be    17    considered to have a naked position in the event    18    it didn't also acquire the corresponding    19    over-the-counter derivative?    20    MR. OXFORD: Object to the form.    21    A. I think if the question you're asking    22    is if there was an over-the -- exchange-traded    23    option hedging an over-the-counter position,    24    that if you didn't assume the over-the-counter    25    position, would that single exchange-traded</p>	<p style="text-align: right;">Page 153</p> <p>1                   D. McIsaac    2    option be naked? Unless you had something else    3    in your portfolio that was hedging it or could    4    be considered a hedge to it, yes.    5    Q. Is it your understanding that Barclays    6    was acquiring the over-the-counter derivatives    7    of LBI in the September 2008 transaction?    8    A. I do not believe they were.    9    Q. Is it fair to say, then, that Barclays    10    would have been reasonable in assuming that    11    there may be unhedged exchange-traded    12    derivatives positions in the portfolio it was    13    acquiring?    14    MR. OXFORD: Object to the form of the    15    question. Assumes facts not in evidence.    16    A. I don't know if there were    17    over-the-counter derivatives in the -- in LBI's    18    portfolio, nor do I know if they hedged them    19    with exchange-traded derivatives. The --    20    Q. Is it possible that they did?    21    MR. OXFORD: Object to the form.    22    A. Yes, it's possible that could have    23    happened.    24    Q. And if that was the case, would that    25    position then not be fully hedged if you were</p>

	Page 154	Page 155
1	D. McIsaac	D. McIsaac
2	taking the exchange-traded portfolio and not the	assume as an acquirer that you were getting a
3	over-the-counter portfolio?	fully hedged portfolio if you were taking
4	MR. OXFORD: Object to the form.	exchange-traded derivatives and not
5	Asked and answered.	over-the-counter derivatives?
6	You can answer again.	MR. OXFORD: Object to the form. That
7	A. Unless there was another security or	assumes facts not in evidence.
8	another transaction out there that that was	A. I wouldn't assume anything. I would
9	hedging.	inquire as to what I was purchasing and what the
10	Q. Okay. My question assumes that the	various books were, and if I had exchange-traded
11	position is hedging the over-the-counter	derivatives hedging an, you know, an
12	position. Do you understand?	over-the-counter derivative book, I would assume
13	A. Yes, but there could be another	I'd find that out before I decided to buy the
14	position that that would also act as a hedge	unhedged exchange-traded derivatives.
15	for.	Q. Okay. When you're -- if you were
16	Q. Do you -- does a broker-dealer	considering an acquisition of tens of thousands
17	typically put duplicative hedges on its	of exchange-traded derivatives positions, how
18	portfolio?	would you go about determining whether or not
19	A. No. What I meant is they could be	those positions were hedged in full or in part
20	hedging this transaction. You take that	by over-the-counter derivatives or vice-versa?
21	transaction off, it may be now a hedge for a	A. I guess I'd ask the people who were
22	different security out there. All I'm saying	managing the over-the-counter derivative book if
23	is, in the realm things, it could be hedging	they had exchange-traded derivatives in their
24	another exposure.	portfolio.
25	Q. Is it fair to say that you wouldn't	Q. And if the answer was yes, what would
	Page 156	Page 157
1	D. McIsaac	D. McIsaac
2	you do in order to determine the extent of the	same time whether there were equities positions
3	naked exposure on those exchange-traded	that were hedging those positions?
4	derivatives in the event you weren't acquiring	MR. OXFORD: Object to the form.
5	the over-the-counter derivatives?	Which positions are you talking about?
6	MR. OXFORD: Object to the form.	Q. The exchange-traded derivatives
7	Assumes facts not in evidence.	positions that you were -- would be acquiring?
8	You can answer.	MR. OXFORD: Okay. Same objection.
9	A. I would ask them what their portfolio	You can answer.
10	of exchange-traded derivatives was that was	A. I thought we started this by saying if
11	hedging it, specific portfolio.	we had exchange-traded derivatives hedging an
12	Q. And would that require you to obtain	over-the-counter book, well, how would I
13	information not only about the positions that	determine that? And I think I said I would talk
14	were open in an exchange-traded derivatives	to the people managing that book. I would
15	account, but also the relationship between those	assume, and maybe that's a bad thing, I would
16	positions and any over-the-counter positions?	probably ask them also what other positions do
17	A. No, I would just ask for a list of the	they have that's exchange-traded that is in the
18	exchange-traded derivatives in his trading	portfolio that I might be acquiring.
19	portfolio book.	Q. Okay. And you would want to analyze
20	Q. And what would you do with that list?	the relationships between the exchange-traded
21	A. I would, I guess, determine if I want	derivatives, the over-the-counter derivatives,
22	to buy those assets without the	and the other long and short positions in the
23	over-the-counters positions that they may or may	portfolio that you were acquiring in order to
24	not be hedging.	understand the relationships between the various
25	Q. Would you also try to determine at the	trades, is that fair?

<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object to the form.</p> <p>3 A. If I was not obtaining the</p> <p>4 over-the-counter derivatives and had no reason</p> <p>5 to know about them, I would try to assess the</p> <p>6 exchange-traded derivatives and the equity</p> <p>7 positions on the risk that it was -- that it</p> <p>8 would give me perhaps to take over those</p> <p>9 positions. I don't care what they did with the</p> <p>10 over-the-counter if I'm not assuming that.</p> <p>11 Q. Do you care what they did with the</p> <p>12 over-the-counter if the over-the-counter</p> <p>13 derivatives were related to the exchange-traded</p> <p>14 derivatives or the fixed equity positions that</p> <p>15 you were acquiring in terms of a hedge</p> <p>16 relationship?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. Again, if I'm not acquiring the</p> <p>19 over-the-counter, why would I care their</p> <p>20 relationship to the exchange-traded that I was</p> <p>21 acquiring? I wouldn't care if it was a good</p> <p>22 hedge or not because I wasn't acquiring the</p> <p>23 over-the-counter.</p> <p>24 Unless you're saying that I, in the</p> <p>25 realm of possibility, I may decide to take over</p>	<p>1 D. McIsaac</p> <p>2 the over-the-counter positions.</p> <p>3 Q. Would you care if it was naked hedge</p> <p>4 that you were acquiring, a naked position -- I'm</p> <p>5 sorry.</p> <p>6 Would you care if it was a naked</p> <p>7 position that you were acquiring because you</p> <p>8 weren't getting the over-the-counter position?</p> <p>9 MR. OXFORD: Object to the form.</p> <p>10 A. I would analyze that just as any other</p> <p>11 position I was acquiring I would analyze.</p> <p>12 Q. You say on the top of page 8 in your</p> <p>13 expert report that, "Mr. Leitner appears to</p> <p>14 assume that Barclays was, at least at the start</p> <p>15 of the week, purchasing a book of business that</p> <p>16 was at least partly hedged."</p> <p>17 Is it your understanding that Barclays</p> <p>18 was acquiring a book of business that was partly</p> <p>19 hedged or that was fully hedged as of the</p> <p>20 beginning of the week?</p> <p>21 A. I don't know if I have an</p> <p>22 understanding one way or the other. I don't</p> <p>23 think anybody's business would be fully hedged,</p> <p>24 because if you're fully hedged, then you don't</p> <p>25 make money. So you would determine what hedges</p>
<p>Page 160</p> <p>1 D. McIsaac</p> <p>2 you wanted based on the risk that you wanted in</p> <p>3 that book and where you thought your rewards</p> <p>4 were. You wouldn't, for every long position,</p> <p>5 have a corresponding short because then you</p> <p>6 wouldn't make any money.</p> <p>7 Q. Would you be qualified to do that</p> <p>8 assessment yourself if you were advising on a</p> <p>9 transaction of the type that Lehman and Barclays</p> <p>10 entered into in September of 2008?</p> <p>11 MR. OXFORD: Object to the form. I'm</p> <p>12 not sure it's clear what assessment you're</p> <p>13 asking about.</p> <p>14 MS. BLOOMER: He can ask me to clarify</p> <p>15 if he needs me to clarify, Neil.</p> <p>16 A. I don't know, when you say "assess,"</p> <p>17 what you mean by it.</p> <p>18 Q. You said you wouldn't for every long</p> <p>19 position have a corresponding short because you</p> <p>20 wouldn't make any money. You said you would</p> <p>21 determine what hedges you wanted based on the</p> <p>22 risk that you wanted in that book and where you</p> <p>23 thought your rewards were.</p> <p>24 Were you qualified -- are you</p> <p>25 qualified, do you consider yourself qualified to</p>	<p>Page 161</p> <p>1 D. McIsaac</p> <p>2 make those types of assessments in the</p> <p>3 connection with a transaction of this type?</p> <p>4 MR. OXFORD: Objection to the form.</p> <p>5 A. What I was referring there is the</p> <p>6 trader who's trading that book would make that</p> <p>7 assessment. Firms have various people that</p> <p>8 monitor what the traders are doing and there are</p> <p>9 different risk managers that look at different</p> <p>10 risk.</p> <p>11 If you're asking me if I was long IBM</p> <p>12 and short a call on AT&amp;T, could I assess the</p> <p>13 total risk on that, I would know that I have</p> <p>14 exposure on two sides and I'm not hedged. Could</p> <p>15 I tell you how much I could lose on each? No,</p> <p>16 but firms will have systems that do that.</p> <p>17 Lehman certainly had a system that did</p> <p>18 that because they were on -- they were a CSE</p> <p>19 firm so they certainly had value at risk and</p> <p>20 they did -- they did analysis of what their</p> <p>21 gains and losses were, and I'm -- what their</p> <p>22 gains and losses could be based on the value at</p> <p>23 risk, and I'm assuming that they had the</p> <p>24 wherewithal to determine that.</p> <p>25 Q. Do you have knowledge of how the</p>

<p>1 D. McIsaac</p> <p>2 process of assessing this risk and determining</p> <p>3 what positions you are taking over would consist</p> <p>4 of?</p> <p>5 MR. OXFORD: Object to the form.</p> <p>6 A. Again, you normally have a</p> <p>7 businessperson determine what risk appetite he</p> <p>8 had for his business and determine if the book</p> <p>9 of business that they were selling he wished to</p> <p>10 buy and it fit into his risk model.</p> <p>11 Q. Do you know how long it would take</p> <p>12 that person to do an analysis of the risk</p> <p>13 profile of a portfolio of exchange-traded</p> <p>14 derivatives and equities positions the size that</p> <p>15 Barclays was acquiring in September of 2008?</p> <p>16 A. I do not know how long it would take,</p> <p>17 but I would assume that the systems already in</p> <p>18 place at LBI would have spit that information</p> <p>19 out.</p> <p>20 Q. You think that you could hit a button</p> <p>21 and print that information out; is that your</p> <p>22 testimony?</p> <p>23 MR. OXFORD: Object to the form.</p> <p>24 Mischaracterizes the witness's testimony.</p> <p>25 You can answer.</p>	<p>1 D. McIsaac</p> <p>2 A. I believe Lehman had systems that</p> <p>3 provided them with value at risk on a daily</p> <p>4 basis.</p> <p>5 Q. And do those systems that provide</p> <p>6 value at risk on a daily basis tell you which</p> <p>7 positions are hedging which positions so that if</p> <p>8 you're not taking all of the positions, you know</p> <p>9 what's at risk?</p> <p>10 MR. OXFORD: Objection to the form.</p> <p>11 A. I don't believe it will earmark every</p> <p>12 naked position that's in the portfolio. It will</p> <p>13 tell you the portfolio and what the anticipated</p> <p>14 market movement could be in that portfolio.</p> <p>15 Q. And if there are multiple portfolios,</p> <p>16 and you're not taking all of them, would you</p> <p>17 agree that it's not as simple as pressing a</p> <p>18 button in order to determine the risk profile of</p> <p>19 the portfolio that you're taking over?</p> <p>20 MR. OXFORD: Object to the form.</p> <p>21 Mischaracterizes the witness's testimony.</p> <p>22 MS. BLOOMER: I'm asking him a</p> <p>23 question. I'm not characterizing anything.</p> <p>24 A. I would believe that the systems would</p> <p>25 enable the management of Lehman to assess the</p>
<p>Page 164</p>	<p>Page 165</p>

<p style="text-align: right;">Page 166</p> <p>1                   D. McIsaac</p> <p>2 Lehman's system and I can't determine whether or</p> <p>3 not they did, but I'm assuming that during the</p> <p>4 due diligence somebody would have looked at</p> <p>5 that.</p> <p>6           Q. During what due diligence?</p> <p>7           A. Barclays' due diligence.</p> <p>8           Q. And how long did Barclays have to do</p> <p>9 that due diligence?</p> <p>10          MR. OXFORD: Object to the form.</p> <p>11          Asked and answered.</p> <p>12          You can answer again.</p> <p>13          A. I don't know how long Barclays had to</p> <p>14 do the due diligence. I assume they had enough</p> <p>15 time to do it or else they would not have</p> <p>16 entered into the transaction.</p> <p>17          Somebody, I'm assuming, made an</p> <p>18 assessment of the risk of what they were buying</p> <p>19 and determining whether or not it fit into what</p> <p>20 they were looking for and they could afford to</p> <p>21 take on that risk.</p> <p>22          Q. Could it be that they agreed to take</p> <p>23 on the risk because they believed they were</p> <p>24 getting protection of the posted margin at the</p> <p>25 clearing corporations, is that possible?</p>	<p style="text-align: right;">Page 167</p> <p>1                   D. McIsaac</p> <p>2                   MR. OXFORD: Object to the form.</p> <p>3           A. I can't go into what they thought they</p> <p>4 were getting and weren't getting. I cannot tell</p> <p>5 you what is in their mind and what they were</p> <p>6 getting and what they weren't getting.</p> <p>7           Q. Is it possible that the reason they</p> <p>8 agreed to take on these positions was not</p> <p>9 necessarily because they had the time to do all</p> <p>10 of the due diligence, but because they believed</p> <p>11 they were getting posted margin as protection</p> <p>12 against some portion of those risks?</p> <p>13          MR. OXFORD: Objection to the form.</p> <p>14          Q. Is that possible?</p> <p>15          A. Which positions? We've talked about</p> <p>16 the portfolio. We've talked about cash</p> <p>17 positions and exchange-traded derivatives.</p> <p>18          What positions are we looking for</p> <p>19 margin to protect?</p> <p>20          Q. Is it possible that Barclays agreed to</p> <p>21 take over Lehman's exchange-traded derivatives</p> <p>22 portfolio because it believed that it was</p> <p>23 getting the margin that was posted to secure</p> <p>24 those positions as protection against any risk</p> <p>25 that may exist due to the fact that those</p>
<p style="text-align: right;">Page 168</p> <p>1                   D. McIsaac</p> <p>2 positions may or may not be naked exposures?</p> <p>3                   MR. OXFORD: Objection. Asked and</p> <p>4 answered.</p> <p>5           A. I don't know if I could assess what</p> <p>6 was in their mind on negotiating the deal and</p> <p>7 what they thought they were getting and weren't</p> <p>8 getting.</p> <p>9           Q. I'm asking you if it's possible that</p> <p>10 that's the reason that they agreed to go forward</p> <p>11 with the transaction --</p> <p>12          A. It is possible --</p> <p>13          Q. -- despite having not done the due</p> <p>14 diligence that they requested.</p> <p>15          A. It is possible that that was in their</p> <p>16 mind and they thought of that, yes.</p> <p>17          Q. Okay. In your review of the evidence</p> <p>18 in this case, did you see any indication that</p> <p>19 Barclays was arranging to post margin to the OCC</p> <p>20 or the various other clearing brokers and</p> <p>21 clearing organizations such that the margin</p> <p>22 requirements come Monday, September 22, would be</p> <p>23 satisfied in order to avoid a liquidation?</p> <p>24          A. I didn't see anything to the effect</p> <p>25 that they were preparing to do that, but I</p>	<p style="text-align: right;">Page 169</p> <p>1                   D. McIsaac</p> <p>2 haven't reviewed all the documents that Barclays</p> <p>3 has in their possession as to the transaction.</p> <p>4           Q. If you were advising a company who was</p> <p>5 acquiring an exchange-traded derivatives</p> <p>6 portfolio, and you knew the closing was going to</p> <p>7 take place in a matter of days, would you be</p> <p>8 advising that company to start making</p> <p>9 arrangements to post the collateral if you</p> <p>10 didn't believe you were getting the collateral</p> <p>11 that had already been posted by the selling</p> <p>12 entity?</p> <p>13          A. Where would I advise them to post the</p> <p>14 collateral if they didn't buy anything as yet?</p> <p>15 I'm not sure what the question is. How would I</p> <p>16 advise them to post collateral? Post collateral</p> <p>17 where?</p> <p>18          Q. To arrange. Would you advise them to</p> <p>19 start arranging to post that collateral if you</p> <p>20 believed you weren't going to be getting the</p> <p>21 collateral that was already posted by the</p> <p>22 selling entity?</p> <p>23          A. How much time would I -- I don't think</p> <p>24 they would need a lot of time to arrange for</p> <p>25 collateral to post if they were a broker-dealer.</p>

<p style="text-align: right;">Page 170</p> <p>1                   D. McIsaac</p> <p>2   They had plenty of collateral that could have</p> <p>3   been posted if they needed to.</p> <p>4   Q. Are you aware of how many different</p> <p>5   clearing organizations and clearing brokers LBI</p> <p>6   traded in exchange-traded derivatives through?</p> <p>7   A. I believe they traded through the OCC,</p> <p>8   the CME in the U.S. I believe they cleared</p> <p>9   through other brokers for some of the other</p> <p>10   foreign businesses. I don't know what</p> <p>11   arrangements Barclays had with those entities</p> <p>12   already.</p> <p>13   Q. What is the typical practice of a</p> <p>14   clearing organization at the open of business on</p> <p>15   a given day if collateral is not posted</p> <p>16   sufficient to satisfy the margin requirements?</p> <p>17   MR. OXFORD: Objection. Form.</p> <p>18   A. I'm not sure what the question --</p> <p>19   could you sort of rephrase it so I understand</p> <p>20   what the question is?</p> <p>21   Q. Sure. If the OCC woke up on Monday</p> <p>22   morning and realized that there was no</p> <p>23   collateral posted in the OCC accounts that were</p> <p>24   held on behalf of LBI, what would the OCC have</p> <p>25   done?</p>	<p style="text-align: right;">Page 171</p> <p>1                   D. McIsaac</p> <p>2   A. Well, I don't know how that could</p> <p>3   happen because I don't know how the collateral</p> <p>4   could come out. So I assume when they were</p> <p>5   taking over the positions, however they decided</p> <p>6   to move those positions into their</p> <p>7   infrastructure into their position, that they</p> <p>8   would make arrangements with the OCC to have the</p> <p>9   adequate collateral there.</p> <p>10   Sometimes you may transfer the</p> <p>11   collateral that's in the accounts already and</p> <p>12   then pay it back to the -- to the seller just as</p> <p>13   a means to do it efficiently.</p> <p>14   Q. And if you were advising an entity, a</p> <p>15   seller, to enter into that type of an</p> <p>16   arrangement, would you have something written</p> <p>17   into an agreement somewhere to provide for a</p> <p>18   true-up of that money?</p> <p>19   A. I would have something that explained</p> <p>20   what I was purchasing, and if I wasn't</p> <p>21   purchasing those assets, I might have something</p> <p>22   in there saying I'll return them or else. If</p> <p>23   I'm not paying for them, I'd be obliged to</p> <p>24   return them. I've done a deal before, we have</p> <p>25   moved those assets over and then paid them back</p>
<p style="text-align: right;">Page 172</p> <p>1                   D. McIsaac</p> <p>2   the next day. It was just the ease of moving it</p> <p>3   into the -- into the process of moving the</p> <p>4   exchange-traded derivatives over.</p> <p>5   Q. Would it be prudent as an advisor to a</p> <p>6   seller in that circumstance to have a</p> <p>7   documentation of the agreement that you would be</p> <p>8   getting back billions of dollars in collateral?</p> <p>9   MR. OXFORD: Objection to the form.</p> <p>10   Assumes facts not in evidence.</p> <p>11   You can answer.</p> <p>12   A. I would assume that as well as what</p> <p>13   you were purchasing would be in the agreement.</p> <p>14   Q. I'm showing you what has been marked</p> <p>15   as Exhibit 51. Oh, you already have a document</p> <p>16   that's Exhibit 51.</p> <p>17   If you look at paragraph 1(a), it says</p> <p>18   here, "For good and valuable consideration, the</p> <p>19   receipt and sufficiency of which are hereby</p> <p>20   acknowledged, Lehman hereby sells, assigns,</p> <p>21   transfers and sets over to Barclays, without</p> <p>22   recourse or without representation or warranty,</p> <p>23   all of Lehman's rights, title, interests,</p> <p>24   powers, privileges, remedies, obligations, and</p> <p>25   duties in, to, under, and in respect of the</p>	<p style="text-align: right;">Page 173</p> <p>1                   D. McIsaac</p> <p>2   Account, as of the Effective Date including with</p> <p>3   respect to (i) the Clearing Fund deposit; (ii)</p> <p>4   all margin deposits held by OCC with respect to</p> <p>5   the account; (iii) all settlement obligations</p> <p>6   with regard to transactions in cleared accounts;</p> <p>7   and (iv) all rights and obligations in respect</p> <p>8   of exercises of options contracts and</p> <p>9   assignments of such exercises."</p> <p>10   Do you see that?</p> <p>11   A. Yes.</p> <p>12   Q. Do you agree that under this agreement</p> <p>13   the Trustee agreed -- authorized Lehman's sale</p> <p>14   of Lehman's rights in the margin deposits that</p> <p>15   were held at the OCC without recourse or</p> <p>16   representation or warranty?</p> <p>17   MR. OXFORD: I'll object to the form</p> <p>18   of the question. Calls for a legal</p> <p>19   conclusion.</p> <p>20   A. I don't think -- I'm not a lawyer, so</p> <p>21   I don't want to talk about it, but I don't think</p> <p>22   this is selling -- this is the sale agreement.</p> <p>23   This is an agreement just to transfer at the</p> <p>24   OCC, and I assume when they say hereby</p> <p>25   acknowledge for, you know, sufficiency, without</p>

Page 174	Page 175
<p>1                   D. McIsaac</p> <p>2   recourse, representation, whatever has happened,</p> <p>3   is in another agreement. This is not the</p> <p>4   binding sale agreement, I don't think.</p>	<p>1                   D. McIsaac</p> <p>2   Q. Okay.</p> <p>3   A. It is not determining what</p> <p>4   compensation was paid or how the arrangements</p> <p>5   were made. All this is between two</p> <p>6   counterparties who are at the clearing org.</p> <p>7   transferring their obligations from one to</p> <p>8   another.</p>
<p>5   Q. This is a binding agreement, you</p> <p>6   realize that, right?</p> <p>7   MR. OXFORD: Objection to form. Calls</p> <p>8   for a legal conclusion.</p>	<p>9   Q. So you assume that the sale agreement,</p> <p>10   for example, that was approved by the court</p> <p>11   suggests that the posted margin would be</p> <p>12   transferred and then this agreement would make</p> <p>13   sense to you; is that what you're saying?</p>
<p>10   A. I think what I said is this is not a</p> <p>11   sale agreement.</p>	<p>14   MR. OXFORD: Objection to form.</p> <p>15   Misstates the witness's testimony.</p>
<p>11   Q. Do you think that it's -- do you think</p> <p>12   that the language of this provision that we just</p> <p>13   looked at together suggests that Lehman was</p> <p>14   going to transfer the margin deposits held by</p> <p>15   the OCC to Barclays? Is that what you</p> <p>16   understand this language to mean?</p>	<p>16   A. I think the sale agreement would</p> <p>17   denote what was being paid for the assets, not</p> <p>18   how they were being transferred.</p>
<p>17   A. Yes.</p>	<p>20   Q. And this would denote how it's being</p> <p>21   transferred?</p>
<p>18   MR. OXFORD: Objection to form.</p>	<p>22   MR. OXFORD: Objection. Form.</p> <p>23   A. This would denote the authority for</p> <p>24   OCC to transfer it. You have a sale agreement</p> <p>25   and you may have another agreement on how you're</p>
Page 176	Page 177
<p>1                   D. McIsaac</p> <p>2   going to effectually move moneys back and forth.</p> <p>3   Usually you convert, do a conversion, and you'll</p> <p>4   have some documents that talk about how you're</p> <p>5   going to do that.</p>	<p>1                   D. McIsaac</p> <p>2   A. I would guess there's no recourse to</p> <p>3   the OCC if something went wrong.</p>
<p>6   Q. But the fact that it was going to be</p> <p>7   transferred, that is denoted in the TAA; is that</p> <p>8   right?</p>	<p>4   Q. You don't think it may mean without</p> <p>5   recourse to Barclays for any of the money that</p> <p>6   Lehman is transferring to Barclays?</p>
<p>9   MR. OXFORD: Objection. Form.</p>	<p>7   MR. OXFORD: Objection. Form. Asked</p> <p>8   and answered. Calls for a legal conclusion.</p>
<p>10   A. This is a vehicle to move the Lehman</p> <p>11   option boxes at OCC into Barclays' name.</p>	<p>9   You can answer again.</p> <p>10   A. As I said, I think this means recourse</p> <p>11   to the OCC.</p>
<p>12   Q. And that would include the margin</p> <p>13   deposits?</p>	<p>12   Q. Is it possible that it means without</p> <p>13   recourse to anyone?</p>
<p>14   A. I believe it includes everything</p> <p>15   that's denoted here, which is the margin</p> <p>16   deposits is part of it.</p>	<p>14   MR. OXFORD: Objection. Calls for a</p> <p>15   legal conclusion.</p>
<p>17   Q. Okay. What do you understand "without</p> <p>18   recourse" to mean?</p>	<p>16   A. It's a legal document. I'll let the</p> <p>17   lawyers decide.</p>
<p>19   MR. OXFORD: Objection. Form. Calls</p> <p>20   for a legal conclusion.</p>	<p>18   Q. Okay. I'd like to go back in your</p> <p>19   report to page 23 again where you say that "a</p> <p>20   rational seller would not include margin in the</p> <p>21   deal unless it was being compensated dollar for</p> <p>22   dollar," do you see that?</p>
<p>21   You can answer.</p>	<p>23   A. Could you point out what paragraph?</p>
<p>22   A. I'm not sure what it means in this</p> <p>23   case.</p>	<p>24   I'm sorry.</p> <p>25   Q. Page 23 at the last --</p>
<p>24   Q. What do you generally understand the</p> <p>25   term "without recourse" to mean?</p>	

Page 178	Page 179
1 D. McIsaac	1 D. McIsaac
2 A. Got it. Sorry.	2 had additional cash and assets that were
3 Q. You see that language?	3 deposited as margin and also clearing funds
4 A. Uh-huh.	4 deposited at the OCC?" Do you see that
5 Q. I'm handing you -- I'm going to mark	5 question?
6 it as an exhibit -- Exhibit 688.	6 A. Yes.
7 (Exhibit 688, Deposition of Bart	7 Q. Mr. McDade responds, "Yes, I did, but
8 McDade, marked for identification, as of	8 keep in mind the context that we had had assets
9 this date.)	9 like that, for example, at the CME and they lost
10 Q. If you could turn with me to page 275.	10 those assets over the course of the week. So we
11 This is testimony of Bart McDade. Are you	11 had no confidence that those were potentially
12 familiar with that name? Do you know who he is?	12 our assets given what had been transpiring."
13 A. I believe he might have been the	13 Do you see that?
14 president at Lehman Brothers, Inc.	14 A. Yes.
15 Q. Is it your understanding that he was	15 Q. What do you understand Mr. McDade to
16 involved in the negotiations of the transaction	16 be suggesting in this testimony?
17 in September of 2008 between Lehman and	17 MR. OXFORD: Objection. Form. Calls
18 Barclays?	18 for speculation.
19 A. I believe he was, but I don't know if	19 A. I wouldn't want to try to guess what
20 I've ever seen anything that said what his role	20 he's thinking.
21 was in it.	21 Q. Do you have any idea what he means
22 Q. Okay. On page 275, starting at line	22 when he's referring to the CME losing assets
23 3, Mr. McDade was asked: "Did you understand	23 over the course of the week?
24 that, in addition to the long positions and the	24 A. I'm assuming based on what we said
25 short positions that Lehman had at OCC, it also	25 before that maybe he liquidated some of their
Page 180	Page 181
1 D. McIsaac	1 D. McIsaac
2 assets. But this is a paragraph taken out of	2 what had been transpiring," and he was saying in
3 this page 275, so I don't know where it is in	3 response to a question about assets, cash and
4 relation to what this question is referring to	4 assets, that were deposited as margin in its
5 or where the background for it is.	5 clearing funds deposited at the OCC.
6 Q. You said the CME could have liquidated	6 Do you understand Mr. McDade to be
7 positions. Aren't you aware that the CME in	7 suggesting that the assets posted at the OCC
8 fact did liquidate or auction off positions in	8 were at risk?
9 LBI's account during the week of September 15?	9 MR. OXFORD: Objection. Asked and
10 A. I said this could have been referring	10 answered.
11 to that. I don't know if this is referring to	11 A. Again, I don't know if I can determine
12 that. I don't know what it's referring to.	12 what Mr. McDade meant. There were a lot of
13 Q. Do you know of any other actions by	13 assets mentioned above that. I'm not sure what
14 the CME during that week that involved	14 he's referring to there. He might have been
15 liquidation of positions?	15 referring to long positions. I don't know.
16 A. He doesn't say anything here about	16 Q. Do you agree that Mr. McDade seemed to
17 liquidation of positions. He just is referring	17 think that there were some assets at the OCC
18 to they lost assets.	18 that were potentially not going to be available
19 Q. Do you know of any instance other than	19 to Lehman and that he thought the CME example
20 the auction in which LBI lost assets in relation	20 was evidence of that?
21 to the CME account?	21 A. I don't want to speculate what he
22 A. I don't know of any other reference	22 meant by these words. I don't know really what
23 anyplace else of them losing assets at the CME.	23 he meant by these words.
24 Q. Mr. McDade says, "We had no confidence	24 Q. Assuming Mr. McDade was referring to
25 that those were potentially our assets given	25 the loss of \$1.6 billion in assets at the CME on

<p>1 D. McIsaac</p> <p>2 September 18, and assuming for purposes of this</p> <p>3 question that Mr. McDade was talking about the</p> <p>4 margin and clearing funds deposited at the OCC</p> <p>5 when he says they had no confidence that those</p> <p>6 were potentially our assets, would you consider</p> <p>7 it irrational for Mr. McDade to lack that</p> <p>8 confidence?</p> <p>9 MR. OXFORD: Objection to form.</p> <p>10 MR. GREEN: Objection.</p> <p>11 A. Again, I'm not sure what his lacking</p> <p>12 of confidence is. The question is did you</p> <p>13 understand that, in addition to the long</p> <p>14 positions and short positions that Lehman had at</p> <p>15 the OCC, it also had additional cash assets that</p> <p>16 were deposited as margin, so the answer is --</p> <p>17 Q. And my question assumed that the</p> <p>18 assets in the answer that he gave was the assets</p> <p>19 that were deposited as margin and clearing funds</p> <p>20 at the OCC. So assuming that that's what the</p> <p>21 assets were referring to, was it irrational for</p> <p>22 Mr. McDade to lack confidence that those were</p> <p>23 going to be available to Lehman?</p> <p>24 MR. OXFORD: Objection. Form.</p> <p>25 Assumes facts not in evidence.</p>	<p>1 D. McIsaac</p> <p>2 A. I mean, I -- I'm having a problem</p> <p>3 answering the question only because I don't know</p> <p>4 what he said in reference to and what the time</p> <p>5 period was that this was talking -- even talking</p> <p>6 about. I don't know if this is talking about</p> <p>7 the sale or anything else. I'm reading one</p> <p>8 paragraph.</p> <p>9 It seems somehow that he's concerned</p> <p>10 about that there was confidence in that</p> <p>11 potential assets -- what is he saying? "So we</p> <p>12 had no confidence that those were potentially</p> <p>13 our assets given to what was transpiring." I</p> <p>14 don't know what he means by that. Maybe he</p> <p>15 thought he sold them already. I don't know.</p> <p>16 Q. Okay. If you were involved in the</p> <p>17 negotiations of this transaction on behalf of</p> <p>18 Lehman and you had just seen the CME auction off</p> <p>19 all of your proprietary positions and transfer</p> <p>20 the margin that was posted at the CME to the</p> <p>21 bidders who were willing to take those positions</p> <p>22 over, and then the OCC started threatening to</p> <p>23 liquidate your account, would you be concerned</p> <p>24 that the same thing might happen?</p> <p>25 MR. OXFORD: Objection. Form.</p>
<p>Page 184</p>	<p>Page 185</p>

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<p>1 D. McIsaac</p> <p>2 would have no margin requirement.</p> <p>3 Q. And the margin that was posted to</p> <p>4 secure those positions in the event of a</p> <p>5 liquidation would be accessible to the OCC,</p> <p>6 correct, to cover any losses on that</p> <p>7 liquidation?</p> <p>8 MR. OXFORD: Objection. Form.</p> <p>9 A. I thought you asked me if I was</p> <p>10 liquidating them. If I was liquidating them,</p> <p>11 no, they would give me back my margin.</p> <p>12 Q. They would give you back your margin</p> <p>13 after you had liquidated the positions and</p> <p>14 settled any costs associated with that</p> <p>15 liquidation, right?</p> <p>16 A. Correct, any costs associated with the</p> <p>17 OCC on the liquidation.</p> <p>18 Q. Would they give you back your margin</p> <p>19 before the positions were closed out and before</p> <p>20 they had gotten protected themselves?</p> <p>21 A. No, that's why I would be liquidating</p> <p>22 them so that I could close out my account with</p> <p>23 the OCC.</p> <p>24 Q. Okay. And is there a risk that you</p> <p>25 liquidated those positions and the cost of</p>	<p>1 D. McIsaac</p> <p>2 liquidating the positions exceeds the margin</p> <p>3 that you had posted to secure those positions?</p> <p>4 MR. OXFORD: Objection. Asked and</p> <p>5 answered.</p> <p>6 A. I believe somebody would assess that</p> <p>7 risk and determine what to do, and if they</p> <p>8 thought the cost was going to exceed it, then if</p> <p>9 it was liquidated, wouldn't they come back and</p> <p>10 charge me for it anyway?</p> <p>11 Q. How long would it take you to</p> <p>12 liquidate tens of thousands of positions, do you</p> <p>13 think? A day?</p> <p>14 MR. OXFORD: Objection to form.</p> <p>15 A. I have no idea.</p> <p>16 Q. You have no idea?</p> <p>17 A. I have no idea.</p> <p>18 Q. Do you think it's likely that you</p> <p>19 could liquidate tens of thousands of positions,</p> <p>20 equities options positions in a day, without</p> <p>21 substantially moving the market?</p> <p>22 MR. OXFORD: Objection. Form. Asked</p> <p>23 and answered. Assumes facts not evidence.</p> <p>24 You can answer.</p> <p>25 A. I don't know what the difference is if</p>
Page 188	Page 189
<p>1 D. McIsaac</p> <p>2 you move the market whether or not you could</p> <p>3 liquidate them.</p> <p>4 Q. Do you understand that there could be</p> <p>5 a difference in the cost of liquidating them if</p> <p>6 the market price changes throughout the course</p> <p>7 of the day that you're conducting your</p> <p>8 liquidation?</p> <p>9 A. Yes. But what does that have to do</p> <p>10 with me, my ability to liquidate them? You</p> <p>11 asked me could I liquidate them? I said yes.</p> <p>12 Q. And the cost of liquidating them would</p> <p>13 be dependent upon the impact that the sales</p> <p>14 would have on the market price of what you're</p> <p>15 liquidating, isn't that right?</p> <p>16 A. Yes.</p> <p>17 Q. CME liquidated the positions when it</p> <p>18 liquidated the proprietary account on September</p> <p>19 18th in a single day.</p> <p>20 Do you have any reason to think that</p> <p>21 the OCC would not have taken the same approach?</p> <p>22 MR. OXFORD: Objection. Form.</p> <p>23 A. I'm not -- I don't understand what the</p> <p>24 question is. We started out my saying that the</p> <p>25 firm should liquidate. Now you're asking me</p>	<p>1 D. McIsaac</p> <p>2 would the OCC liquidate.</p> <p>3 Q. That's right. I'm asking you a</p> <p>4 different question now.</p> <p>5 A. Okay.</p> <p>6 Q. Which is: If the OCC were to</p> <p>7 liquidate, do you have any reason to think that</p> <p>8 they wouldn't have conducted that liquidation in</p> <p>9 the same manner in which the CME did?</p> <p>10 MR. OXFORD: Same objection.</p> <p>11 A. I don't know their procedures for</p> <p>12 liquidating accounts. I would assume it could</p> <p>13 be similar to the CME, but in light of the CME</p> <p>14 doing that, if I was Lehman, I would take -- I</p> <p>15 would be proactive and do my own liquidation</p> <p>16 before they liquidated me and I could lose \$1.6</p> <p>17 billion.</p> <p>18 Q. If you thought you couldn't avoid the</p> <p>19 loss of \$1.6 billion either way, might you just</p> <p>20 decide to transfer the accounts to an acquirer</p> <p>21 instead of liquidating them yourself?</p> <p>22 MR. OXFORD: Objection. Asked and</p> <p>23 answered. Assumes facts not in evidence.</p> <p>24 A. Again, I think I've said I would</p> <p>25 assess the risk of doing the business, but if I</p>

<p style="text-align: right;">Page 190</p> <p>1                   D. McIsaac  2    was negotiating transferring the margin, that  3    would be a part to start my negotiating. If  4    they were liquidated, that would be the amount;  5    I would negotiate from there.</p> <p>6    Q. And if you assume that the liquidation  7    would cost you all of the margin, would it be  8    rational to agree to transfer the accounts and  9    transfer the margin with the accounts?</p> <p>10   A. For what reason? Why would I have to  11    do that? What benefit do I get by doing that?</p> <p>12   Q. Do you preserve customer positions by  13    doing that?</p> <p>14   A. Are we talking about customer  15    positions or proprietary? I'm not sure what  16    we're talking about here. I thought we were  17    talking proprietary positions. That's what the  18    CME --</p> <p>19   Q. Would it preserve customer positions  20    by doing that? Let's talk about the customer  21    account. If you moved -- if you knew that you  22    were going to lose the posted margin in a  23    liquidation either way, would it be rational to  24    transfer that margin to an acquirer in order to  25    preserve the customer positions for the benefit</p>	<p style="text-align: right;">Page 191</p> <p>1                   D. McIsaac  2    of those customers?</p> <p>3    MR. OXFORD: Objection. Asked and  4    answered. Assumes facts not in evidence.</p> <p>5    You can answer.</p> <p>6    A. I would assume you would take all that  7    into account. The main thing I would look at is  8    that the CME liquidated the proprietary  9    positions and not the customer positions.</p> <p>10   There is some, I guess some goal in  11    preserving the customer positions even from the  12    clearing orgs., so I would assume Lehman would  13    talk to the OCC and said if we liquidated all of  14    our proprietary positions, maybe they would not  15    liquidate the customer positions. That would be  16    something you would negotiate when that is  17    happening. You would discuss it when that is  18    happening.</p> <p>19   Q. Assuming the parties didn't agree to  20    just transfer all of the accounts with all of  21    the margin to Barclays?</p> <p>22   A. I would think you would look at all  23    your options before you decided on doing  24    something.</p> <p>25   Q. Okay. And how long does it take to</p>
<p style="text-align: right;">Page 192</p> <p>1                   D. McIsaac  2    analyze all of your options in the circumstances  3    that we're talking about here?</p> <p>4    MR. OXFORD: Objection. Form.</p> <p>5    MR. GREEN: Same objection.</p> <p>6    A. I don't know how long they had to  7    prepare for these options and how long -- how  8    long it would take to call the OCC and ask them  9    the question. I'm sure you could ask them the  10    question and go from there and see what they  11    said.</p> <p>12   Q. And what question would you propose  13    asking the OCC?</p> <p>14   A. Well, you're -- you seem to be  15    concerned about them liquidating the account. I  16    would talk to the OCC and say, "The CME just  17    liquidated my accounts. What are your plans?"</p> <p>18   Q. And --</p> <p>19   A. Or I'm sure maybe they were having  20    discussions with the OCC at the time.</p> <p>21   Q. Didn't we look at an e-mail earlier  22    that showed that -- that had the discussion with  23    the OCC and the OCC told Lehman and the Trustee  24    that it was going to liquidate their accounts?</p> <p>25   A. That was after the 19th.</p>	<p style="text-align: right;">Page 193</p> <p>1                   D. McIsaac</p> <p>2    Q. Okay.</p> <p>3    A. The sale agreement was the 16th.</p> <p>4    Q. Let's assume the threats to liquidate  5    started on the 15th. Does that change your  6    opinion?</p> <p>7    MR. OXFORD: Object to the form. It  8    assumes facts not in evidence.</p> <p>9    You can answer if you're able.</p> <p>10   A. I don't know what happened at the time  11    and I don't know -- we're assuming if the OCC  12    came in on the 15th and said unless you  13    liquidated, if that was the case, then why on  14    the 20th were they threatening to liquidate it  15    if they already threatened to liquidate it and  16    didn't do it? I'm not sure --</p> <p>17   Q. I understand, but I want you to  18    understand that I'm trying to ask you questions  19    because you are providing an expert opinion  20    about what would have been rational under these  21    circumstances, and I'm probing that by  22    describing to you the circumstances that may or  23    may not affect your opinion.</p> <p>24   So I would like you to answer my  25   questions as opposed to posing questions each</p>

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<p>1 D. McIsaac 2 time.</p>	<p>1 D. McIsaac 2 MR. OXFORD: Objection. Form.</p>
<p>3 A. Sorry about that. 4 Q. That's okay.</p>	<p>3 A. We talked about the 15th is what I 4 asked the question -- answered a question on, 5 and the Trustee wasn't involved then. So I'm 6 not sure, this question now, what's the basis of 7 it. I'm sorry.</p>
<p>5 A. I -- would it be rational? It would 6 be rational to do many things. It might be 7 rational to transfer the margin. It might be 8 rational to liquidate your accounts. It may be 9 rational to find another buyer. There's a lot 10 of rational things that could be done at that 11 point in time.</p>	<p>8 Q. Right. Each question I ask is a new 9 question, so I would appreciate it if you would 10 not assume for every question I ask that I'm 11 building on a prior question.</p>
<p>12 Q. And is it fair to say that you can't 13 really say what would be truly rational if you 14 didn't understand the circumstances?</p>	<p>12 A. No. No. That's why I'm asking what's 13 the basis for this question, because I don't 14 know.</p>
<p>15 MR. OXFORD: Objection. Form. 16 A. I can say that based -- and I was not 17 there, I don't know what was negotiated and what 18 was discussed. I think what I laid out was 19 rational things you could do.</p>	<p>15 Q. I'm asking you how you can give an 16 expert opinion about what it would have been 17 rational for the Trustee to do under a specific 18 set of facts when you don't know the 19 circumstances that the Trustee was facing at the 20 time?</p>
<p>20 Q. How can you say that it wouldn't have 21 been rational for the Trustee to make a decision 22 under the specific circumstances that it was 23 facing at the time if you don't know the 24 specific circumstances that the Trustee was 25 facing at the time?</p>	<p>21 MR. OXFORD: Objection. Form. 22 Misstates -- misstates the witness's 23 testimony.</p>
	<p>24 But you can answer.</p>
	<p>25 A. I don't know what went through the</p>
Page 196	Page 197
<p>1 D. McIsaac 2 Trustee's mind and what his determination was 3 and what he believed to be a rational approach 4 at that time. What I've given an opinion on is 5 what I think a rational seller would do in my 6 opinion at that point in time, how they would 7 react to what was going on.</p>	<p>1 D. McIsaac 2 A. My opinion is a rational seller would 3 look for dollar for dollar, they would negotiate 4 from there, and at this point in time if there 5 were things that needed to be adjusted, people 6 negotiating the sale and the purchase would come 7 to an agreement on what was being sold and what 8 was being purchased.</p>
<p>8 Q. Doesn't that opinion require you to 9 know what was going on at that time?</p>	<p>9 Q. Okay. So when you say in your report 10 a rational seller would not include margin in 11 the deal unless it was being compensated dollar 12 for dollar, do you mean what you say in that 13 sentence or are you modifying it here today?</p>
<p>10 MR. OXFORD: Objection. Form.</p>	<p>14 MR. OXFORD: Objection. Form. Asked 15 and answered.</p>
<p>11 A. I believe I've stated that a rational 12 seller would negotiate the sale of the margin 13 assets. No matter what was going on at the time 14 you would do that negotiation.</p>	<p>16 You can answer it again.</p>
<p>15 Q. Is it fair to say that it is not your 16 opinion that a rational seller would have 17 required dollar-for-dollar compensation for 18 every dollar's worth of margin that it agreed to 19 transfer in this situation facing this Trustee 20 in September of 2008, or --</p>	<p>17 A. You are giving me facts that were not 18 part of my opinion. What I said in my opinion 19 was a rational purchaser would want to quantify 20 the risk to determine what additional assets it 21 needed, and a rational seller would include 22 margin on dollar-for-dollar basis.</p>
<p>21 MR. OXFORD: Objection.</p>	<p>23 As you negotiate that, you may change 24 your mind. You may decide I'll take 50 cents on 25 the dollar, I may take 25 cents on the dollar, I</p>
<p>22 Q. -- is it not your opinion?</p>	
<p>23 MR. OXFORD: Objection. Form. Asked 24 and answered.</p>	
<p>25 You can answer it again.</p>	

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<p>1                   D. McIsaac</p> <p>2 may want a dollar and a half on a dollar because</p> <p>3 I think the assets are worth more. That's a</p> <p>4 negotiation that would occur at that time.</p> <p>5   Q. You might want zero --</p> <p>6    A. But the starting fact would be I would</p> <p>7 want dollar for dollar and I would negotiate</p> <p>8 from there. I would assume I would not give</p> <p>9 away assets for nothing.</p> <p>10   Q. Would you agree that there could be</p> <p>11 circumstances in which it was rational to agree</p> <p>12 to transfer the accounts in exchange for the</p> <p>13 margin that was posted to secure those accounts?</p> <p>14    MR. OXFORD: Objection. Form.</p> <p>15    A. I would agree that the seller could</p> <p>16 make a rational decision to transfer the</p> <p>17 accounts with no compensation, if that's what</p> <p>18 they wanted, based on facts and circumstances at</p> <p>19 that point in time if that's what they</p> <p>20 negotiated, but I would anticipate that that</p> <p>21 would be somehow brought into -- into the</p> <p>22 contract that that was being done and probably</p> <p>23 brought in front of the judge if he was selling</p> <p>24 assets above and beyond what was in the</p> <p>25 Clarification Letter.</p>	<p>1                   D. McIsaac</p> <p>2   Q. Okay.</p> <p>3    MR. OXFORD: Trish, that's about</p> <p>4 another hour. I don't know if this is a</p> <p>5 good time to take five minutes.</p> <p>6    MS. BLOOMER: Yes, it's fine.</p> <p>7    THE VIDEOGRAPHER: The time is 3:03.</p> <p>8 This is the end of the tape labeled number</p> <p>9 4. We're going off the record.</p> <p>10   (Recess.)</p> <p>11   THE VIDEOGRAPHER: This is the start</p> <p>12 of the tape labeled number 5. The time is</p> <p>13 3:19. We're back on the record.</p> <p>14 BY MS. BLOOMER:</p> <p>15   Q. Good afternoon again.</p> <p>16   A. Good afternoon.</p> <p>17   Q. Would you consider assets that were</p> <p>18 posted as margin at a clearing organization with</p> <p>19 respect to an exchange-traded derivatives</p> <p>20 account to be an asset that's used in the</p> <p>21 business of the exchange-traded derivatives?</p> <p>22    MR. OXFORD: Objection. Form.</p> <p>23    A. It would be an asset that at that</p> <p>24 point in time was being used to secure the</p> <p>25 obligations. Assets used in the business may</p>
Page 200	Page 201
<p>1                   D. McIsaac</p> <p>2 have a lot of different terms.</p> <p>3   Q. Do you agree that posted margin is</p> <p>4 associated with the exchange-traded derivatives</p> <p>5 business that it secures?</p> <p>6    A. It's associated with the</p> <p>7 exchange-traded derivatives that it's securing.</p> <p>8 I don't know what business it would be part of.</p> <p>9   Q. Can you operate an exchange-traded</p> <p>10 derivatives business without posting margin to</p> <p>11 satisfy the requirements of a clearing</p> <p>12 organization?</p> <p>13   A. I don't believe so.</p> <p>14   Q. I'm showing you Exhibit 1, which is</p> <p>15 the Asset Purchase Agreement. If you could turn</p> <p>16 to page 2 at the bottom, meaning the number on</p> <p>17 the bottom. The term "business" is defined, do</p> <p>18 you see that? It's the second full definition</p> <p>19 on page 2.</p> <p>20   A. You're saying -- oh, I'm sorry.</p> <p>21 Business, yes, I'm sorry. I was looking at the</p> <p>22 bottom, actually.</p> <p>23   Yes.</p> <p>24   Q. Would exchange-traded derivatives in</p> <p>25 your experience fall under any of the categories</p>	<p>1                   D. McIsaac</p> <p>2 of LBI's businesses that are described in this</p> <p>3 definition?</p> <p>4    MR. OXFORD: Objection. Form.</p> <p>5    A. The concept of exchange-traded</p> <p>6 derivatives -- there are different parts of the</p> <p>7 business. You have futures that are clearing</p> <p>8 and execution business. You have equity options</p> <p>9 that are just -- that are transpiring for</p> <p>10 customers that are just part of the customer</p> <p>11 business as well as selling bonds, you know,</p> <p>12 stocks and bonds, and then you have trading of</p> <p>13 exchange-traded derivatives that could be part</p> <p>14 of a portfolio of assets or you could possibly</p> <p>15 just be trading them by themselves.</p> <p>16   Q. Okay. And one of the businesses</p> <p>17 that's listed here of the seller that are</p> <p>18 encompassed within the term "business" is the</p> <p>19 trading and advisory businesses. Do you see</p> <p>20 that?</p> <p>21   A. Uh-huh. I see fixed income and</p> <p>22 equities cash trading.</p> <p>23   Q. And then in the next line do you see</p> <p>24 trading and advisory businesses?</p> <p>25   A. Yes.</p>

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1 D. McIsaac	1 D. McIsaac
2 Q. Would exchange-traded derivatives that 3 were proprietary to LBI be considered part of 4 the trading business of LBI?	2 A. Yes. 3 Q. Okay. If you turn to page 4 -- I'm 4 sorry, page 10. I'm sorry, 6.
5 A. I'm a little confused why trading 6 would be used in two places. I'm not sure 7 what -- what the differentiation is between the 8 two of them. Fixed income and equities cash 9 trading and trading and advisory business, I 10 just don't know why it would be referenced 11 twice.	5 If you turn to page 6 of the Asset 6 Purchase Agreement, do you see the definition of 7 "purchased assets" that begins around the middle 8 of that page?
12 Q. Is it your understanding that the 13 exchange-traded derivatives were a portion of 14 the trading business that Barclays acquired?	9 A. Uh-huh.
15 MR. OXFORD: Objection. Form.	10 Q. It says, "Purchased Assets means all 11 of the assets of seller and its subsidiaries 12 used in connection with the business, excluding 13 the excluded assets," and then the word 14 "including," do you see that?
16 A. The proprietary part of it would have 17 been part of the exchange -- the trading 18 businesses that they acquired.	15 A. Yes.
19 Q. And would you agree that the customer 20 futures business that Barclays acquired from 21 Lehman was -- I'm sorry. Would you agree that 22 the customer futures business that LBI conducted 23 prior to September 22, 2008 would fall within 24 the definition of LBI's business as a futures 25 commission merchant?	16 Q. And the term "business" that's 17 capitalized there, do you understand that to be 18 referring to the business definition that we 19 just looked at on the prior page?
Page 204	Page 205
1 D. McIsaac 2 'including' or any variation thereof means 3 including, without limitation, and shall not be 4 construed to limit any general statement that it 5 follows to the specific or similar terms or 6 matters immediately following it."	1 D. McIsaac 2 A. It means including without limitation. 3 Q. And you understand what that means, 4 the common usage of that term means? 5 A. I -- "including without limitation" 6 means including, we're not limiting it to what 7 it means, what follows it.
7 A. Yes.	8 Q. Okay. Thank you. Is it your opinion 9 that the margin that was posted in LBI's 10 accounts at the OCC were not assets of LBI used 11 in connection with the business, as that term is 12 defined in this agreement?
8 Q. Turning back to page 6, the definition 9 of "purchased assets," given the definition we 10 just looked at of the term "including," is it 11 fair to say that the "purchased assets" 12 definition is not limited by the subparagraphs 13 that follow the word "including"?	13 MR. OXFORD: Objection. Form.
14 MR. OXFORD: Objection. Form. Calls 15 for a legal conclusion.	14 Misstates the document. Calls for a legal 15 conclusion.
16 A. Yeah, I'm not a lawyer, so this is -- 17 I'm not sure what it means and if you had before 18 businesses, why you needed additional, but I 19 don't know. I'm not -- I don't want to -- I 20 don't want to give an opinion on a legal 21 document.	16 You can answer. 17 A. Could you re-read that question? 18 Q. Is it your opinion that the margin 19 that was posted in LBI's accounts at the OCC 20 were not assets of LBI used in connection with 21 the business as that term is defined in this 22 agreement?
22 Q. Okay. You understand what the term 23 "including without limitation" means?	23 MR. OXFORD: Objection. Form. Again, 24 misstates the document. Calls for a legal 25 conclusion.
24 A. I believe so.	
25 Q. What does that mean?	

<p style="text-align: right;">Page 206</p> <p>1                   D. McIsaac</p> <p>2     A. There was a negative in there and I'm</p> <p>3     not sure -- I mean, I don't know what that term</p> <p>4     means in a legal document.</p> <p>5     Q. Are the assets posted as margin at the</p> <p>6     OCC assets of LBI?</p> <p>7     A. They may or may not be assets of LBI.</p> <p>8     Q. Do you know in the context of the</p> <p>9     assets at the OCC as of September 19, 2008</p> <p>10    whether they were assets of LBI or assets of</p> <p>11    someone else?</p> <p>12    A. The assets posted there could have</p> <p>13    been derived from many factions. If they put</p> <p>14    Treasury bills up, it could have been Treasury</p> <p>15    bills owned by LBI. It could have been Treasury</p> <p>16    bills that were accepted as collateral against a</p> <p>17    receivable for a reverse repo or a stock borrow.</p> <p>18    It could be customers or non-customers assets.</p> <p>19    Q. Do you understand the Trustee's</p> <p>20    position in this case to be the assets at the</p> <p>21    OCC were not LBI proprietary assets?</p> <p>22    A. I don't know if I have seen that -- I</p> <p>23    don't recall seeing that specific phrase, that</p> <p>24    they were not proprietary assets.</p> <p>25    Q. You reviewed this agreement when you</p>	<p style="text-align: right;">Page 207</p> <p>1                   D. McIsaac</p> <p>2     provided your opinion; is that right?</p> <p>3     A. Yes. Uh-huh.</p> <p>4     Q. And is it your opinion that this</p> <p>5     agreement does not encompass the margin assets</p> <p>6     that were posted at the OCC?</p> <p>7     A. I don't believe I've seen anything in</p> <p>8     here that references margin assets, and it</p> <p>9     appeared to be a very substantial asset class.</p> <p>10    I would have thought they would have been broken</p> <p>11    out in the agreement as to what was happening</p> <p>12    with the assets that were posted at various</p> <p>13    exchanges.</p> <p>14    Q. You said earlier when we looked at the</p> <p>15    Transfer and Assumption Agreement that you would</p> <p>16    have assumed that the purchase agreement would</p> <p>17    document the agreement to transfer margin to</p> <p>18    Barclays if that were the parties' agreement,</p> <p>19    correct?</p> <p>20    A. Right.</p> <p>21    Q. Do you think this purchase agreement</p> <p>22    accomplishes that when it says "all assets of</p> <p>23    seller used in connection with the business,</p> <p>24    excluding the excluded assets, are purchased</p> <p>25    assets"?</p>
<p style="text-align: right;">Page 208</p> <p>1                   D. McIsaac</p> <p>2     MR. OXFORD: Objection. Form. Asked</p> <p>3     and answered. You can answer.</p> <p>4     A. At points in time you may use assets</p> <p>5     to secure your obligations. I don't know if</p> <p>6     they would be considered assets of the business.</p> <p>7     If they were \$700 million today and \$200 million</p> <p>8     tomorrow, what would they be? So I would think</p> <p>9     if you were trying to transfer or somehow</p> <p>10    include those margin assets, you would define</p> <p>11    them and what the value was because that value</p> <p>12    could have changed drastically from day one to</p> <p>13    whenever you're consummating the deal. As you</p> <p>14    saw, the margin requirements go significantly up</p> <p>15    and then down.</p> <p>16    Q. Is it your understanding that the</p> <p>17    parties agreed that they would include specific</p> <p>18    references to every asset that Barclays was to</p> <p>19    acquire in this transaction?</p> <p>20    MR. OXFORD: Objection. Form.</p> <p>21    A. I don't know if they did or not. I</p> <p>22    would think significant assets such as margin</p> <p>23    would be noted and what was happening with it.</p> <p>24    Q. The agreement says that all of the</p> <p>25    assets used in connection with the business are</p>	<p style="text-align: right;">Page 209</p> <p>1                   D. McIsaac</p> <p>2     purchased assets, excluding the excluded assets.</p> <p>3     Would you expect that since margin was</p> <p>4     such a significant asset, as you say, that it</p> <p>5     would have, therefore, had to have been -- that</p> <p>6     it would, therefore, have been logical to</p> <p>7     reference it in the excluded assets section if</p> <p>8     indeed the parties intended to exclude it?</p> <p>9     MR. OXFORD: Objection. Form.</p> <p>10    A. I don't know if you -- I would always</p> <p>11    include what you're buying, not necessarily</p> <p>12    exclude what you're not buying. I think to make</p> <p>13    something really understandable, you would say</p> <p>14    include this, include that.</p> <p>15    Like I said, the margin at the point</p> <p>16    in time when this was done might have been a</p> <p>17    billion dollars. On the 19th, it might have</p> <p>18    been \$100 million. I think you would define</p> <p>19    that at the time you were agreeing to the</p> <p>20    contract so that you made sure both parties came</p> <p>21    to what their -- with what they agreed to.</p> <p>22    So if it was on the 15th or something,</p> <p>23    it was one item, one balance, later on it's a</p> <p>24    different balance. I don't think an asset like</p> <p>25    that would be included without some kind of</p>

<p style="text-align: right;">Page 210</p> <p>1 D. McIsaac 2 reference. 3 Q. So you would assume the parties to a 4 transaction would specifically identify the 5 included assets as opposed to saying we're 6 getting everything except the excluded assets; 7 is that your testimony? 8 A. I would expect if it's an asset like 9 margin, that would go up and down in value on a 10 daily basis. If you were negotiating to buy 11 that asset, you would want to put into the 12 contract what the value of that asset is, what 13 that asset is that you're receiving. 14 Open-ended margin could be, again, it 15 could have been a dollar. Would they have 16 accepted it if it was only a dollar? I don't 17 know. So I think for any ambiguity, you would 18 include the assets and you would either state at 19 the time of the transaction or put a dollar 20 amount at that point in time so that if they 21 were used at one point in time, they weren't 22 sold out, you know, five days later. 23 Q. If you were advising LBI on this deal, 24 and you saw that the agreement was structured so 25 that all of the assets were purchased assets</p>	<p style="text-align: right;">Page 211</p> <p>1 D. McIsaac 2 except what was excluded, would you advise them 3 that to avoid ambiguity they should reference 4 margin in the excluded assets section? 5 MR. OXFORD: Objection to form. 6 A. I would probably advise the seller -- 7 the buyer to make sure that they put in all the 8 assets that they wanted to make sure they got in 9 the agreement, not -- 10 Q. I'm not asking you what you would do 11 for the buyer. I'm asking you if you were 12 advising the seller and their agreement stated 13 "purchased assets means all of the assets of 14 seller used in connection with the business, 15 excluding the excluded assets, would you advise 16 him that it was prudent to reference margin as 17 an excluded asset given how substantial the 18 value was. 19 A. I would advise them to reference it 20 either as excluded or included. 21 Q. Included if it was included and 22 excluded if it was excluded? 23 A. Right. 24 Q. Okay. Is it your understanding that 25 Barclays knew on September 16, 2008 what the</p>
<p style="text-align: right;">Page 212</p> <p>1 D. McIsaac 2 margin was worth at the OCC and at the other 3 clearing organizations to which LBI traded in 4 exchange-traded derivatives? 5 A. I believe I've seen some e-mail 6 traffic that noted that the legal counsel for 7 Barclays had been discussing margin requirements 8 of various exchanges. I think Mr. Leitner 9 pointed out that Barclays was monitoring their 10 exposure by knowing what the margin values were. 11 So I assume they knew something that was going 12 on at the exchanges. 13 Q. Is it your opinion that you would have 14 advised the acquirer to reference margin 15 specifically because it was so substantial in 16 value assumes that Barclays knew on September 16 17 what the value of the margin was; is that 18 correct? 19 A. I would think they would know what 20 assets they were buying. 21 Q. And does your opinion assume that they 22 knew what assets, what the value of the margin 23 was that they were buying on April -- on 24 September 16, 2008 when they entered into this 25 Asset Purchase Agreement?</p>	<p style="text-align: right;">Page 213</p> <p>1 D. McIsaac 2 MR. OXFORD: Objection. Form. 3 A. I would have to assume somebody 4 purchasing assets would know the value of the 5 assets they were purchasing, if not what they 6 thought the value was, at least what the value 7 was on the seller's records. 8 Q. I'm not trying to be argumentative. 9 You've given an opinion in your report, and we 10 can look at the opinion if you don't recall it. 11 You've given an opinion in your report 12 that, given how much this margin was worth, you 13 would have expected the acquirer to reference it 14 specifically as a purchased asset -- 15 A. Yes. 16 Q. -- if indeed they thought it was being 17 purchased. 18 I'm asking you whether that opinion 19 assumes that Barclays knew on September 16, 2008 20 what the value of the margin was that LBI held 21 or that LBI had posted to secure the 22 exchange-traded derivatives? 23 A. Again, I would assume they knew the 24 value of what they were purchasing. So I -- 25 Q. Does your opinion --</p>

<p style="text-align: center;">Page 214</p> <p>1                   D. McIsaac</p> <p>2     A. My opinion assumes that they would</p> <p>3     know the value they were purchasing. I would</p> <p>4     assume most people wouldn't buy something that</p> <p>5     they didn't know what they were buying.</p> <p>6     Q. Would you assume that most people</p> <p>7     wouldn't buy an entire broker-dealer business</p> <p>8     based on 48 hours of negotiations as well?</p> <p>9     MR. OXFORD: Objection. Form.</p> <p>10   Assumes facts not in evidence.</p> <p>11   A. From what I understand, Bank of</p> <p>12   America bought Lehman, more than just the</p> <p>13   brokerage business, over a weekend. So I think</p> <p>14   you can buy anything you want in any time period</p> <p>15   you want. I don't know how much due diligence</p> <p>16   was done in July, in August, in June.</p> <p>17   People have an understanding of the</p> <p>18   various competitors and what they do and how</p> <p>19   they manage it. There are reports out there.</p> <p>20   There's information out there. So I don't know</p> <p>21   what Barclays knew when they negotiated the</p> <p>22   deal.</p> <p>23   I don't know how much time they took</p> <p>24   to write this versus how much time it took to</p> <p>25   determine what they were buying.</p>	<p style="text-align: center;">Page 215</p> <p>1                   D. McIsaac</p> <p>2     Q. And again, you think it's possible</p> <p>3     that they executed this agreement before they</p> <p>4     knew what they were buying?</p> <p>5     MR. OXFORD: Objection. Form.</p> <p>6     Misstates the witness's testimony.</p> <p>7     You can answer.</p> <p>8     A. I believe I said I assume when they</p> <p>9     execute an agreement they knew what they were</p> <p>10   buying.</p> <p>11   Q. Is that assumption based on any</p> <p>12   preliminary assumptions about how much time</p> <p>13   Barclays had to do the due diligence prior to</p> <p>14   the time it entered into this transaction?</p> <p>15   A. I can't fathom why anybody would buy</p> <p>16   anything without knowing what they were buying.</p> <p>17   So if they took 48 hours and thought that was</p> <p>18   enough to assess what they were buying and put a</p> <p>19   value on it, then that's what they did.</p> <p>20   I don't know -- I can't be in Barclays</p> <p>21   shoes to figure out what was in their mind when</p> <p>22   they bought this. Evidently, they thought they</p> <p>23   were getting valuable assets. How much they</p> <p>24   were getting and what they were willing to pay</p> <p>25   for it they had to make an assessment, and I</p>
<p style="text-align: center;">Page 216</p> <p>1                   D. McIsaac</p> <p>2     assume they took whatever time it needed to take</p> <p>3     to do that assessment.</p> <p>4     And I'm assuming that this transaction</p> <p>5     had to be approved by the board of directors.</p> <p>6     They had to provide some information to their</p> <p>7     board of directors on a purchase of this size.</p> <p>8     I don't think they went to</p> <p>9     the board -- would have gone to the board of</p> <p>10   directors and said we're going to buy this, but</p> <p>11   we don't know what we're buying. So I would</p> <p>12   think they would have had a clear understanding</p> <p>13   of what they were buying.</p> <p>14   Q. Might they have had a clear</p> <p>15   understanding of what they were buying but not</p> <p>16   necessarily a clear understanding of what all of</p> <p>17   those assets were worth?</p> <p>18   A. Then what were they buying if they</p> <p>19   didn't know what they were buying, what the</p> <p>20   worth -- how could you put a price on something</p> <p>21   unless you assessed it?</p> <p>22   Q. I would appreciate it if you would</p> <p>23   answer my question.</p> <p>24   A. I'm sorry. I'm asking you, I don't</p> <p>25   believe a purchaser would enter into an</p>	<p style="text-align: center;">Page 217</p> <p>1                   D. McIsaac</p> <p>2     agreement to purchase something without</p> <p>3     assessing what the value is that they were</p> <p>4     purchasing.</p> <p>5     Q. Okay. If you could take the Sale</p> <p>6     Order transcript that we had looked at earlier,</p> <p>7     it's Exhibit 442, and if you could turn to</p> <p>8     page -- if you could turn to page 60.</p> <p>9     At the bottom of page 60, the hearing</p> <p>10   transcript reads: "We cannot take the risk of</p> <p>11   rejecting this transaction because of</p> <p>12   ambiguities, the lack of a piece of paper to</p> <p>13   support every element of the assets to be</p> <p>14   transferred, the lack of a definition as to</p> <p>15   particular items."</p> <p>16   Do you see that?</p> <p>17   A. Yes.</p> <p>18   Q. Is it possible that in this</p> <p>19   circumstance the parties agreed, due to the</p> <p>20   extraordinary circumstances at the time, to</p> <p>21   structure a deal in a way that they wouldn't</p> <p>22   structure under normal circumstances?</p> <p>23   MR. OXFORD: Objection. Form.</p> <p>24   A. I believe that they might structure a</p> <p>25   deal differently than they would under different</p>

Page 218	Page 219
1 D. McIsaac 2 circumstances, yes.	1 D. McIsaac 2 mind at the time of selling this and what 3 decisions they thought they were doing and for 4 what reasons.
3 Q. And is it your understanding that the 4 circumstances that existed in 2000 -- in 5 September of 2008 made it such that the parties 6 in fact conducted their negotiations and 7 structured this transaction in a manner 8 differently than they would have under normal 9 market situations, circumstances?	5 Q. I'm showing you a document marked as 6 Exhibit 689. 7 (Exhibit 689, Deposition of James 8 Kobak, marked for identification, as of this 9 date.)
10 MR. OXFORD: Objection. Asked and 11 answered.	10 Q. This is deposition testimony that was 11 provided on behalf of the Trustee by Mr. Kobak. 12 Are you familiar with this deposition 13 testimony?
12 A. I believe I answered that saying yes, 13 I believe this was a different time and they 14 negotiated this differently than they would have 15 at other times.	14 A. I don't know if I've read it and 15 relied upon it. I know Mr. Kobak made 16 declarations and depositions. I don't know if 17 this was something that was in my reliance 18 materials, but I know he made the depositions.
16 Q. Is it possible that Lehman was willing 17 to offer terms to Barclays that a typical seller 18 wouldn't necessarily offer because of the 19 exigencies that made this transaction important 20 to Lehman?	19 Q. Okay. So you haven't necessarily -- 20 do you remember reading this deposition 21 transcript?
21 MR. OXFORD: Objection. Form.	22 A. I don't remember, but I might have 23 read it. I don't remember. I read a few of 24 them and -- I don't know if I read this one. I 25 think I might have. I'm not sure if it was this
Page 220	Page 221
1 D. McIsaac 2 or the declaration.	1 D. McIsaac 2 deal that there be no cash excess that would go 3 to Barclays, because that would be inconsistent 4 with the no cash and that this wouldn't make the 5 deal so rich that it would be way beyond the 6 parameters that we discussed earlier."
3 Q. Fast forwarding to the time that the 4 SIPC Trustee was introduced into this matter on 5 Friday, September 19, you said that you don't 6 know what was in the minds of the parties at the 7 time that they were considering this 8 transaction; is that right?	7 Do you see that testimony?
9 A. Uh-huh.	8 A. Yes.
10 Q. If you could turn to page 282 of Mr. 11 Kobak's deposition testimony, starting on line 12 14, the question says, and this is, for context, 13 talking about a Collateral Agreement that the 14 Trustee signed on Friday, September 19, either 15 at or shortly after the sale hearing:	9 Q. Okay. The next question says: "Did 10 you tell anyone this? When you say you signed 11 this consistent with the idea that there would 12 be no cash, this says cash. This says cash will 13 be transferred to Barclays." And the answer, 14 "Yeah, but cash would be transferred against the 15 liabilities. What I'm saying is nobody told us 16 there might be in excess of a billion dollars of 17 cash or something like that that would end up at 18 Barclays when the deal was no cash and when 19 there was an economic parameter to the deal."
16 It says, "LBI has assigned to Barclays 17 all rights and securities, cash, and other 18 property defined as collateral pledged by LBI to 19 the Options Clearing Corporation and held for 20 OCC's benefit at JPMorgan Chase. Did you see 21 that?" The answer is, "Yes."	20 Question: "So to the extent the cash 21 was simply needed to cover the liabilities, you 22 thought it was possible to be included in the 23 deal; is that correct?"
22 The next question: "And was it your 23 understanding that that's what the Trustee was 24 authorizing when you signed this?" And the 25 answer is, "Yes, consistent with the overall	24 Answer: "Yes." 25 Do you recall having ever seen this

<p style="text-align: right;">Page 222</p> <p>1                   D. McIsaac 2 testimony before? 3           A. I don't recall, but I might have seen 4 it, yes. I don't recall right now, but it seems 5 something I might have heard or seen. 6           Q. Would you agree that this testimony is 7 speaking to the understanding that the Trustee 8 and Mr. Kobak had at the time on September 19, 9 2008? 10          MR. OXFORD: Objection. Form. 11          A. I mean, it's taken out of context. 12 I'm reading two pages of a 300-and-some-page 13 document. It looks like Mr. Kobak is stating 14 that he was transferring or willing to transfer 15 assets that he thought was part of the deal. 16          Q. And those assets included collateral 17 pledged by LBI to the Options Clearing 18 Corporation and held for OCC's benefit at 19 JPMorgan Chase, right? 20          A. That's what it says, yes. 21          Q. That -- 22          A. That's what the question says. 23          Q. You understand that to be different 24 from property, customer property held by LBI to 25 secure customer positions?</p>	<p style="text-align: right;">Page 223</p> <p>1                   D. McIsaac 2           MR. OXFORD: Objection. Form. 3           A. I'm not sure of what assets were being 4 held at JPMorgan Chase. It looks like he's 5 saying cash in this reference and it looks like 6 he's assuming it was part of the liabilities. 7 So it might have been the cash that was payable 8 to the customers who put up margin for the OCC 9 trades, and he thought he was just transferring 10 the cash against those liabilities. 11          Q. Would that be cash held by LBI or cash 12 held by JPMorgan under your interpretation of 13 what this may be referring to? 14          A. It would be cash held by LBI at 15 JPMorgan. 16          Q. For whose benefit? 17          A. LBI's. 18          Q. Okay. This seems to be talking about 19 cash that was held for the OCC's benefit at 20 JPMorgan Chase, do you see that? 21          A. It looks like it's being pledged to 22 the OCC for the benefit of LBI and it's held at 23 Chase. 24          Q. And you agree that this is property 25 held at Chase, not at LBI?</p>
<p style="text-align: right;">Page 224</p> <p>1                   D. McIsaac 2           MR. OXFORD: Objection. Form. 3          A. It's property held at LBI on deposit 4 at Chase. 5          Q. I'm showing you what has been marked 6 as Exhibit 25. Do you recognize this document? 7          A. I believe this is what's considered 8 the Clarification Letter. 9          Q. Did you rely on this in forming your 10 opinions in this case? 11          A. I reviewed this, yes. 12          Q. And is it your opinion that this 13 agreement does not encompass property held in 14 respect of OCC accounts to secure proprietary 15 positions of LBI as of September 19, 2008? 16          MR. OXFORD: Objection. Form. 17          A. I believe this does not indicate the 18 transfer or sale of LBI assets put up as margin 19 at the OCC. 20          Q. If you look at the top of page 2, 21 capital letter C in that first paragraph. And 22 this is a definition of the purchased assets. 23 It says, "Exchange-traded derivatives and any 24 property that may be held to secure obligations 25 under such derivatives." Do you see that?</p>	<p style="text-align: right;">Page 225</p> <p>1                   D. McIsaac 2          A. Yes, I do. 3          Q. Do you agree with me that this 4 language is not limited to customer property? 5           MR. OXFORD: Objection. Form. 6          A. I don't know what the parenthetical 7 really means. I think in my report, if that's 8 what you're asking me, I think the 9 parenthetical, to be clear, if this was margin 10 posted, it would say -- it would say assets 11 posted to secure LBI's obligations. It doesn't 12 say that, so it's kind of ambiguous on what I'm 13 holding and what this clause means. 14          To me it means I'm holding it, which 15 means probably customers have given it to me to 16 secure their assets -- their transactions. 17          Q. It doesn't strike you as ambiguous 18 that it doesn't say customer property and you're 19 willing to assume that any property is 20 customer -- strike that. Do you agree with me 21 that the language here nowhere references 22 customer property? 23          A. Yes. 24          Q. Do you see the reference to any 25 property?</p>

	Page 226	Page 227
1	D. McIsaac	D. McIsaac
2	A. No. I see a reference to any	MR. OXFORD: Objection. Form.
3	property.	A. It says "any property."
4	Q. No reference to customer property	Q. You said that you thought it would be
5	appears on the face of this document; is that	ambiguous to say "property that may be held" if
6	right?	what you really meant was "property posted,"
7	MR. OXFORD: Objection. Form.	correct?
8	A. I believe that's correct. I haven't	A. Yes, that's correct.
9	read the rest of it, but in that clause there's	Q. Is it also ambiguous to say "any
10	nothing there. I don't know if in -- if	property" if what you mean is "customer
11	anything in paragraph C says anything to -- you	property"?
12	said the whole page. I don't know if anything	A. I'm looking at the whole phrase and it
13	in paragraph C says anything. I'm just looking	says "any property that may be held to secure."
14	at this clause you're talking about.	I'm looking at the whole phrase, not just the
15	Q. Uh-huh.	two little words. I'm looking at the whole
16	MR. OXFORD: Just so we're clear,	phrase and the way it's written.
17	Trish's question was about the whole	Q. And does the whole phrase reference
18	document.	customer property?
19	MS. BLOOMER: No, my question is about	MR. OXFORD: Objection. Form. Asked
20	this parenthetical.	and answered.
21	MR. OXFORD: Okay. Then you might	A. I believe to me, my opinion, this
22	want to clear up the record.	would refer to assets held by LBI, and the only
23	Q. Does this parenthetical reference the	assets they would have to secure obligations on
24	term "customer property" or does it say "any	the derivatives would be with customers or for
25	property"?	counterparties.
	Page 228	Page 229
1	D. McIsaac	D. McIsaac
2	Q. Does the language say "any property	property of any customer, including any held by
3	that may be held by LBI"?	or on behalf of LBI to secure the obligations of
4	A. No, but to me, my opinion held to	any customer." Do you see that?
5	secure, if I'm writing this, if I'm part of this	A. Just let me read it again, please.
6	agreement, I would have to be holding it, not	"Shall receive ..."
7	anybody else; and holding it, I mean and I have	Yes.
8	the obligation to return it to somebody.	Q. So would you agree that in this
9	Q. Do you think the parties could have	paragraph when the parties intended to limit a
10	written "it may be held by or on behalf of LBI"	phrase to "customer property held by or on
11	if that's what they intended?	behalf of LBI," they said "property of any
12	MR. OXFORD: Objection. Form.	customer held by or on behalf of LBI"?
13	A. I believe they could have written "and	MR. OXFORD: Objection to form.
14	any property posted by LBI to secure their	Q. Would you agree with that?
15	obligations."	A. What -- excuse me. What was the
16	Q. Okay. If you look with me at	question?
17	paragraph 8 on page 4, the third line down	Q. Would you agree that in this paragraph
18	reads, "Any and all property of any customer,	when the parties intended to limit a phrase to
19	including any held by or on behalf of LBI, to	"customer property held by or on behalf of LBI,"
20	secure the obligations of any customer whose	they said "property of any customer held by or
21	accounts are being transferred to purchaser as	on behalf of LBI"?
22	part of the business." Do you see that?	A. It says here "held by or on behalf of
23	A. Yes.	LBI." So I'm assuming that's what they wanted
24	Q. And it says "purchaser shall receive	it to mean, but yes, I can't read into their
25	for the account of the customer any and all	mind what they said because I think you were

Page 230	Page 231
<p>1                   D. McIsaac  2 referring is this what they meant to say, and I  3 don't know if this is what they meant to say.  4 This is what they said.</p>	<p>1                   D. McIsaac  2 know why they would have been so clear in a  3 definition here and not so clear in the  4 definition over here.</p>
<p>5                   Q. And back to page 2, they didn't say  6 "any property of any customer," did they?</p>	<p>5                   Q. Did you consider that they were being  6 perfectly clear and that they were referring to  7 two different sets of assets and that's why they  8 described them differently?</p>
<p>7                   A. No, they did not.  8                   Q. And they didn't say "by or on behalf  9 of LBI," did they?</p>	<p>9                   MR. OXFORD: Objection. Form. Asked  10 and answered.</p>
<p>11                  A. Okay.  12                  A. But they --</p>	<p>11                  A. To me, it wasn't clear. So, no, it  12 wouldn't have been clear to me because to me if  13 I was transferring the margin that I had posted  14 at exchanges, that would be the clear  15 definition.</p>
<p>13                  Q. But you would read this language --  14                  MR. OXFORD: Excuse me, Trish. Mr.  15 McIsaac wasn't finished with his last  16 sentence.</p>	<p>16                  I think over here, where they talk  17 about -- they're talking about held by and on  18 the behalf of LBI, that means LBI is holding it,  19 but it may be at JPMorgan or someplace else. So  20 I think this is fairly clear. I don't think the  21 first clause is that clear as to what they meant  22 by it.</p>
<p>17                  A. But as clearly as they defined it  18 here, why wouldn't they have clearly defined it  19 over here?</p>	<p>23                  Q. Do you agree that exchanges and  24 clearing corporations hold property to secure  25 obligations of derivatives that their clearing</p>
Page 232	Page 233
<p>1                   D. McIsaac  2 members hold?</p>	<p>1                   D. McIsaac  2 you to? Does this encompass anything, in your  3 opinion, that's not already encompassed by  4 paragraph C on page 2 and the parenthetical?</p>
<p>3                   A. Clearing organizations require margin  4 to be held for the obligations of the clearing  5 member. I believe that was your question.</p>	<p>5                   MR. OXFORD: Objection. Form. Calls  6 for a legal conclusion, but you can answer.</p>
<p>6                   Q. So the OCC holds property just as LBI  7 holds property; is that right?</p>	<p>7                   A. Yeah, I mean, it's a legal document.  8 My assumption is that on this is this is not  9 just referring to exchange-traded derivatives,  10 this is referring to the entire account of a  11 customer that would be transferred to Barclays.  12 So if they were holding equity securities at DTC  13 for the customer, we would transfer them to  14 Barclays.</p>
<p>10                  Q. In your opinion does paragraph 8  11 encompass anything that is not encompassed by  12 the parenthetical on page 2?</p>	<p>15                  Q. And in your opinion, the parenthetical  16 on page 2 -- do you believe that the  17 parenthetical on page 2 is unambiguous in terms  18 of the property that it's referring to?</p>
<p>13                  MR. OXFORD: Objection. Form. You  14 mean the whole of paragraph 8 or to specific  15 subsections you referred him to earlier?</p>	<p>19                  MR. OXFORD: Objection. Asked and  20 answered.</p>
<p>16                  MS. BLOOMER: I mean the sentence that  17 we've been focusing on, which starts "in  18 connection therewith" and reads through  19 "whose accounts are being transferred to  20 purchaser as part of the business."</p>	<p>21                  A. It doesn't define the property. It  22 just defines any property that may be held to  23 secure obligations under such derivatives.  24 Again, I believe that's any property held by  25 LBI, not posted by LBI, because if it was</p>
<p>21                  Q. Do you see the language that I refer</p>	

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1                   D. McIsaac	1                   D. McIsaac
2 posted, I think the words would have been used	2                   (Exhibit 690, a document bearing Bates
3 "posted" or "held by" or someplace else further	3                   Nos. CGSH33921 through 922, marked for
4 clarification I think would be included.	4                   identification, as of this date.)
5                   Q. Are assets posted at the OCC by LBI as	5                   Q. Could you take a moment to review this
6 of September 19, 2008 property held by the OCC	6                   e-mail.
7 to secure obligations under the derivatives held	7                   (Document review.)
8 in the OCC accounts?	8                   Q. Have you had a chance to review the
9                   A. I just want to make sure I have your	9                   document?
10 question clear. I believe the question was, is	10                  A. Yes. Yes.
11 the property held at OCC there to secure the	11                  Q. The first sentence of the e-mail from
12 obligations in the accounts at OCC?	12                  James McDaniel at Sidley --
13                   Q. No, that wasn't my question.	13                  Do you know who James McDaniel at
14                   A. Okay.	14                  Sidley is?
15                   Q. Are assets posted at the OCC by LBI	15                  A. I believe he's one of their counsels.
16 property that is held by the OCC to secure	16                  Q. One of whose counsel?
17 obligations under the derivatives in the OCC	17                  A. Sidley's counsels for the OCC.
18 accounts?	18                  Q. For the OCC. Okay.
19                   MR. OXFORD: Objection. Form.	19                  And on September 20, this e-mail is
20                   A. It's property held by OCC. It may be	20                  sent. You see that it's copied to several
21 excess, but it's in the accounts to secure it.	21                  individuals from Weil? Do you understand that
22 Some of it may be used to secure obligations.	22                  to be Weil Gotshal?
23 Some of it may be excess collateral.	23                  A. Yes.
24                   Q. Okay. I'm showing you a document	24                  Q. And you understand that that is the
25 that's marked as Exhibit 690.	25                  law firm that represented LBHI in this
Page 236	Page 237
1                   D. McIsaac	1                   D. McIsaac
2 transaction?	2                   Q. You said earlier that the margin at
3                   A. Uh-huh.	3                   the OCC was of significant value, did you not?
4                   Q. Okay. And then you see that Mr. Kobak	4                   A. Yes.
5 and Mr. Giddens are also copied on this e-mail?	5                   Q. Would you have expected any recipient
6                   A. Yes.	6                  of this e-mail to raise an objection to the
7                   Q. And that's the Trustee and his	7                  OCC's stated intent if they were not of the same
8 counsel, correct?	8                  understanding as to who would be entitled to the
9                   A. That's correct.	9                  cash and securities collateral held by OCC in
10                  Q. The first sentence of the e-mail says,	10                  respect of the OCC accounts?
11 "To the group: OCC is seeking to confirm its	11                  MR. OXFORD: Objection. Form.
12 understanding that the LBI accounts and all	12                  A. I believe this is advising the
13 positions, cash and securities collateral that	13                  individuals that the OCC is assuming that the
14 are held by OCC in respect of those accounts are	14                  assets are being transferred, and in the second
15 intended to be transferred to Barclays and that	15                  paragraph it is saying, "It is our understanding
16 Barclays is assuming all obligations with	16                  that certain parts of the APA are still being
17 respect to those accounts." Do you see that?	17                  negotiated."
18                   A. Yes.	18                  So I'm assuming in the interim while
19                   Q. Do you believe -- are you aware of any	19                  they're negotiating the final documents that the
20 recipient of this e-mail responding to this and	20                  OCC wants the -- I'm guessing this is the Asset
21 telling the OCC that Barclays was not to receive	21                  and Assumption Agreement -- Transfer and
22 the cash and securities collateral held by the	22                  Assumption Agreement to be signed.
23 OCC in respect of the OCC accounts?	23                  Q. You see at the very beginning of the
24                   A. I am not aware of anybody sending an	24                  e-mail it says, "OCC is seeking to confirm its
25 e-mail back saying that.	25                  understanding that all cash and securities

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1 D. McIsaac	1 D. McIsaac
2 collateral are intended to be transferred to	2 a means to allow Barclays to start trading the
3 Barclays"; Do you see that?	3 next day and protecting the OCC. Whatever the
4 A. Yes.	4 agreement was regarding those assets that are
5 Q. If it's true, as you suggest it may	5 being transferred and what payment had to be
6 be, that the Purchase Agreement is still being	6 made for them or not be made for them would I
7 negotiated --	7 expect to be part of an agreement.
8 A. I didn't say that. I'm sorry. Mr.	8 Q. Do you agree that if the parties
9 McDaniel is saying that.	9 hadn't intended for these assets at the OCC to
10 Q. Would you expect when the terms of	10 be transferred to Barclays, it would have been
11 this transaction were confirmed, that if indeed	11 prudent for them to inform the OCC of that?
12 it was the case that Barclays was not to receive	12 MR. OXFORD: Objection. Form.
13 the cash and securities collateral held at the	13 A. Yes. As I said, it would have been
14 OCC, the Trustee and LBI would have been prudent	14 prudent, if they didn't think that all the
15 to inform the OCC of that fact?	15 assets should have been transferred, it would
16 A. Yes.	16 have been prudent to tell the OCC that they were
17 MR. OXFORD: Objection. Asked and	17 not agreeing to that.
18 answered.	18 Q. And have you seen any evidence in the
19 Q. Have you seen any evidence in the	19 record in which any party told the OCC that they
20 record that either the Trustee or LBI's	20 did not intend that?
21 attorneys informed the OCC that Barclays was not	21 A. No, I have not seen anything in the
22 intended to receive the cash and securities	22 record that states that.
23 collateral at the OCC?	23 MS. BLOOMER: I think if you'll give
24 A. No. I think, as I've discussed	24 me a few minutes, I might be wrapped up and
25 before, the Transfer and Assumption Agreement is	25 we can have Amy come in and start the second
Page 240	Page 241
1 D. McIsaac	1 D. McIsaac
2 part of the deposition.	2 that I have put in front of you as Exhibits 691,
3 MR. OXFORD: Okay. Let's go off the	3 692 and 693. And could you identify those for
4 record.	4 the record for me?
5 THE VIDEOGRAPHER: The time is 4:13.	5 A. 691 is my affidavit that was filed
6 This is the end of the tape labeled number	6 with the original motion. 69 --
7 4. We're going off the record.	7 Q. Do you mean the original allocation
8 (Recess.)	8 motion?
9 (Exhibit 691, Affidavit of Daniel	9 A. Allocation motion. I'm sorry.
10 McIsaac, marked for identification, as of	10 692 is the Supplemental Affidavit
11 this date.)	11 filed with the court on or about February 27,
12 (Exhibit 692, Supplemental Affidavit	12 and 693 is the Rebuttal Report.
13 of Daniel McIsaac, marked for	13 Q. Okay. Very good. Now, in 691 if you
14 identification, as of this date.)	14 could turn to paragraph 5, and in that you say,
15 (Exhibit 693, Rebuttal Report of	15 "Based on my experience in the public and
16 Daniel McIsaac, marked for identification,	16 private sectors, I am fully familiar with the
17 as of this date.)	17 SEC rules governing financial responsibility of
18 THE VIDEOGRAPHER: This is the start	18 SEC registered broker-dealers and the protection
19 of tape labeled number 6. The time is 4:45.	19 of customer property and with industry practices
20 We're back on the record.	20 regarding the handling of customer property and
21 EXAMINATION BY	21 compliance with SEC Customer Protection Rules."
22 MS. NEUHARDT:	22 And unless I'm mistaken, which you may
23 Q. Good afternoon, Mr. McIsaac. My name	23 take a look, paragraph 2 of your Rebuttal Report
24 is Amy Neuhardt and I'm representing Barclays	24 contains a very similar statement. Can you just
25 and I'm here to discuss with you the reports	25 confirm that? It's the last sentence.

<p>1 D. McIsaac</p> <p>2 A. Uh-huh.</p> <p>3 Q. So are you offering opinions as an</p> <p>4 expert in any substantive area other than what</p> <p>5 you're describing in this sentence that appears</p> <p>6 in 691 and 693?</p> <p>7 A. When you say -- I'm -- if you can</p> <p>8 clarify what that means. I'm not sure what you</p> <p>9 mean by that.</p> <p>10 Q. Sure. Absolutely. In particular, are</p> <p>11 you putting yourself forth as an expert in SIPA</p> <p>12 statutory or regulatory requirements?</p> <p>13 A. No.</p> <p>14 Q. Okay. Are you putting yourself</p> <p>15 forward as an expert on the practices of SIPC</p> <p>16 trustees?</p> <p>17 A. No.</p> <p>18 Q. Okay. Are you putting yourself</p> <p>19 forward as an expert on the Bankruptcy Code?</p> <p>20 A. No.</p> <p>21 Q. All right. Now, when you say you were</p> <p>22 familiar with the SEC rules governing financial</p> <p>23 responsibility of SEC registered broker-dealers</p> <p>24 and the protection of customer property, are you</p> <p>25 purporting to be an expert in the legal</p>	<p>1 D. McIsaac</p> <p>2 interpretation of those rules?</p> <p>3 A. I have spent a good part of 30 years</p> <p>4 in the industry working on the last 20 years of</p> <p>5 the preparation of the -- my two firms weekly.</p> <p>6 I have monthly 3-3 calculations. I'm a licensed</p> <p>7 Fin. Op., Series 27, so I interpret -- I would</p> <p>8 have to review and interpret the rules and the</p> <p>9 interpretations of those rules.</p> <p>10 Q. Okay. Are you a lawyer?</p> <p>11 A. No, I am not.</p> <p>12 Q. So your testimony is based on your</p> <p>13 practice in interpreting 15c3-3, but not based</p> <p>14 on experience as a lawyer doing legal analysis;</p> <p>15 is that correct?</p> <p>16 A. I am -- sorry.</p> <p>17 MR. OXFORD: Objection. Form. You</p> <p>18 can answer.</p> <p>19 A. I'm not a lawyer and most people who</p> <p>20 work on the reserve formula I believe are not</p> <p>21 lawyers.</p> <p>22 Q. Okay. Now, when you say you are</p> <p>23 familiar with industry practices regarding the</p> <p>24 handling of customer property and compliance</p> <p>25 with SEC Customer Protection Rules, are you</p>
<p>1 Page 244</p> <p>2 D. McIsaac</p> <p>3 purporting to be an expert in the operations and</p> <p>4 processing systems used by Lehman that were fed</p> <p>5 into the reserve calculation?</p> <p>6 MR. OXFORD: Hold on. Objection to</p> <p>7 form. Sorry.</p> <p>8 Q. By reserve calculation, I am referring</p> <p>9 to the calculation required under SEC Rule</p> <p>10 15c3-3. Will you understand that that's what I</p> <p>11 mean when I say "reserve calculation" throughout</p> <p>12 the deposition?</p> <p>13 A. The allocation formula?</p> <p>14 Q. Yes.</p> <p>15 A. Yes.</p> <p>16 MR. OXFORD: Same objection. Do you</p> <p>17 have the question in mind?</p> <p>18 A. No, maybe --</p> <p>19 Q. So when you say you were familiar with</p> <p>20 industry practices regarding the handling of</p> <p>21 customer property and compliance with SEC</p> <p>22 customer rules, are you purporting to be an</p> <p>23 expert in the operations and processing systems</p> <p>24 used by Lehman that were fed into the reserve</p> <p>25 calculation?</p> <p>26 A. When you say an expert in the systems,</p>	<p>1 Page 245</p> <p>2 D. McIsaac</p> <p>3 I am not a systems analyst. I am not a systems</p> <p>4 programmer. I --</p> <p>5 Q. Okay. So you are not familiar with --</p> <p>6 MR. OXFORD: Let him --</p> <p>7 Q. I apologize.</p> <p>8 A. That's all right.</p> <p>9 Q. I realize you weren't through.</p> <p>10 A. I am very familiar with the allocation</p> <p>11 process and what people preparing the report</p> <p>12 will look to see out of the allocation process.</p> <p>13 Q. Okay. So are you familiar with the</p> <p>14 ADP system?</p> <p>15 A. Yes, I am.</p> <p>16 Q. Okay. The ITS system?</p> <p>17 A. No, not necessarily.</p> <p>18 Q. Okay. NTS?</p> <p>19 A. I am familiar with fixed income</p> <p>20 systems.</p> <p>21 Q. Okay. And the RISC, R-I-S-C, system?</p> <p>22 A. I am not intimately familiar with it.</p> <p>23 Q. Okay. Have you ever had any prior</p> <p>24 experience in forensic accounting?</p> <p>25 A. No.</p> <p>26 Q. Okay. Now, are you aware that the</p>

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<p>1 D. McIsaac  2 Trustee and Barclays are currently in a dispute  3 regarding the interpretation of a contract under  4 which Barclays purchased assets from the former  5 Lehman Brothers estate?</p>	<p>1 D. McIsaac  2 connection with the Asset Purchase Agreement  3 and various other documents. It would be  4 clearer for me and perhaps also for the  5 witness it will make things a little quicker  6 if you could clarify if your questions are  7 relating solely to the three affidavits and  8 reports that you have premarked.</p>
<p>6 A. Yes, I am. I sat here through four  7 hours of a deposition on that.</p>	<p>9 MS. NEUHARDT: Yes, they are.</p>
<p>8 Q. Yes. I just don't want a foundation  9 objection from Neil over there.</p>	<p>10 Q. I am purely asking whether you have  11 been asked to interpret the contract as it  12 relates to assets in the reserve accounts or  13 substitute assets for what would be in the  14 reserve account? That doesn't help --</p>
<p>10 Okay. Are you purporting to offer any  11 opinion on the interpretation of the language in  12 that contract?</p>	<p>15 MR. OXFORD: I still have an objection  16 to form, but you can answer if you're able.</p>
<p>13 MR. OXFORD: Objection. Form.  14 A. I don't know if you're going to ask me  15 a question on it, but I don't -- I don't think  16 this allocation motion was part of -- looked  17 at -- I might have reviewed that, but it wasn't  18 part of reliance.</p>	<p>17 A. I'm not sure where you're going. I  18 thought there was only one thing in the  19 allocation motion that talked to the contract  20 with Barclays, and that's the OCC deposit.</p>
<p>19 Q. Have you been asked by anybody to  20 analyze the contract?</p>	<p>21 Q. Okay. Have you examined any other  22 part of the contracts other than the portion  23 that relates to the OCC margin other than in  24 this morning's portion of the deposition?</p>
<p>21 MR. OXFORD: Is your question, because  22 as Mr. McIsaac says, we have sat through  23 almost five hours of questioning --</p>	<p>25 MS. NEUHARDT: A lot.</p>
<p>22 MR. OXFORD: -- from your colleague in</p>	<p>25 MR. OXFORD: -- from your colleague in</p>
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<p>1 D. McIsaac</p>	<p>1 D. McIsaac</p>
<p>2 Q. To your opinion as set forth in the  3 three exhibits sitting in front of you?</p>	<p>2 A. Yes.</p>
<p>4 A. I don't think I placed reliance on the  5 APA to review whether or not the 3-3 was in  6 compliance with the rules.</p>	<p>3 Q. Okay. Do you have any other formal  4 education?</p>
<p>7 Q. Okay. Did you place any reliance on  8 the Clarification Letter?</p>	<p>5 A. No postgraduate. No postgraduate  6 education.</p>
<p>9 A. Again, I don't know, in relation to  10 this, if I placed any reliance on it.</p>	<p>7 Q. So you did no work toward a degree  8 that you then did not receive?</p>
<p>11 Q. You don't know if you placed reliance  12 on it?</p>	<p>9 A. No.</p>
<p>13 A. I don't think I placed any reliance on  14 that. I was asked to review the 3-3 allocation  15 and what could be or compliance issues thereto.</p>	<p>10 Q. So you've taken the courses in law?</p>
<p>16 Q. Okay. If you could turn to the first  17 exhibit in -- the first exhibit in the first  18 exhibit, which is your resumé, and it should be  19 tagged with a purple tag.</p>	<p>11 A. I've taken the courses that were  12 required for my CPA certification.</p>
<p>20 A. Yes.</p>	<p>13 Q. Did that include any courses in law?</p>
<p>21 Q. This is your resumé, correct?</p>	<p>14 A. Yes. Business law I think was a  15 requirement.</p>
<p>22 A. Yes, it is.</p>	<p>16 Q. Business law, okay. All right, that's  17 all I have about your education.</p>
<p>23 Q. It says you have a bachelor of science  24 in accounting from Lehman College; is that  25 correct?</p>	<p>18 Now, this shows the most recent  19 position as you being at UBS Securities. You do  20 not still work at UBS, do you?</p>
	<p>21 A. No, I left UBS in June.</p>
	<p>22 Q. In June of 2009?</p>
	<p>23 A. 9.</p>
	<p>24 Q. Okay. And why did you leave?</p>
	<p>25 A. There was downsizing at UBS.</p>

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1	D. McIsaac	D. McIsaac
2	Q. And where do you currently work?	A. No.
3	A. Currently today I work for KPMG.	Q. Okay. Did you serve any function for
4	Q. And how long have you been at KPMG?	the Trustee other than as an expert witness for
5	A. Three weeks.	this matter in your independent consulting?
6	Q. Three weeks? Okay. What's your	A. I provided an expert report on the
7	position there?	derivatives, and I provided two other -- I think
8	A. Director of Regulatory Advisory.	they're called affidavits for other issues
9	Q. Okay. And did you hold any position	regarding customer protection.
10	between UBS and KPMG?	Q. Do you know if those affidavits were
11	A. Between then I was acting as an	filed in the public record?
12	independent consultant.	A. I believe they were, but I don't know.
13	Q. And was that as independent consultant	I can't say for sure.
14	to the Trustee on this matter?	Q. Okay. And did you perform any other
15	A. That, and I had other clients I was	services for the Trustee?
16	doing work for.	A. From time to time.
17	Q. Can you tell me the other clients?	MR. OXFORD: I'll let you answer that
18	A. It's confidential, I would think.	question yes or no, Mr. McIsaac.
19	Q. It's confidential. All right.	A. Yes.
20	When did you first begin doing	Q. Okay. I think I know what's coming.
21	consulting work for the Trustee?	Can you describe for me the nature of
22	A. On or about the middle of July.	the services you performed for the Trustee?
23	Q. Did you perform any work for Lehman	MR. OXFORD: I'm going to object to
24	Brothers Holdings, Inc. as an independent	the form of that question and instruct you
25	consultant?	not to answer.
	Page 252	Page 253
1	D. McIsaac	D. McIsaac
2	MS. NEUHARDT: And what's the basis of	A. I've been a chair -- well, it's in the
3	your instruction?	resumé. So, no, everything's in the resumé.
4	MR. OXFORD: It's privileged.	Q. Now, in your work as an independent
5	MS. NEUHARDT: Can you describe for me	consultant, and I'm referring specifically to
6	the basis of the privilege?	your work on the expert reports that are in
7	MR. OXFORD: Yes. Mr. McIsaac has	front of you, did you have any staff assisting
8	been retained as a consultant by the Trustee	you?
9	to provide professional advice.	A. No, I did not.
10	MS. NEUHARDT: Are you representing	Q. Okay. All right. I'm going to start
11	that none of the other services that he	with at UBS, could you explain to me how your
12	performed for the Trustee relate in any way	position at UBS gave you experience with
13	to his opinions that have been proffered in	industry practices regarding the handling of
14	these three exhibits?	customer property and compliance with SEC
15	MR. OXFORD: That is my understanding.	customer rules?
16	MS. NEUHARDT: That's your	A. Yes. I was the Fin. Op. for UBS
17	representation on the record?	Securities Financial Operational Principal. I
18	MR. OXFORD: That's my best	signed the Focus Reports. I took all
19	understanding.	responsibility on the financial information
20	Q. Okay. Now, other than the positions	filed with the regulators. I supervised the
21	with KPMG and your independent consulting that	reserve formula calculation, the net capital
22	we have discussed, are there any other	calculations, the seg and secured calculations,
23	professional positions that you have held in the	as well as the filing of the Focus Reports.
24	last 20 years that are not reflected on this	Q. Okay. And did you ever personally do
25	resumé?	the reserve calculation?

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1	D. McIsaac	D. McIsaac
2	A. I worked on it as a more junior	2 along the lines of other series, but, yes, CPA.
3	person.	3 Q. Are you in any professional
4	Q. When you were at UBS?	4 organizations?
5	A. No. No.	5 A. I'm a member of the AICPA, the New
6	Q. Was that in one of your prior	6 York State Society of CPAs. I'm a member of the
7	positions?	7 Financial Management Division of SIFMA, the
8	A. At Dean Witter I managed a group. I	8 Securities Industry and Financial Markets
9	also did some work on it from time to time when	9 Association. I'm past president of the
10	somebody was out.	10 Financial Markets Division, the Financial
11	Q. At Dean Witter that was not a part of	11 Management Division I think it's called, and up
12	your regular duties? You worked on it if	12 until three weeks ago when I took the job at KPM
13	someone was out?	13 I chaired the SIFMA Capital Committee.
14	A. I supervised it. It came under my --	14 Q. Did the AICPA study in any way SEC
15	I managed a group that did it, the people that	15 Rule 15c3-3?
16	did it.	16 A. The AICPA has issued an audit guide
17	Q. Okay. You mentioned that you hold a	17 for the auditing of securities broker-dealers.
18	Series 27 license. Do you hold any other	18 Q. Did you have any involvement in that?
19	professional licenses?	19 A. I might have had some involvement of
20	A. No.	20 it when I was at Deloitte in a past life of
21	Q. Have you in the past?	21 reviewing it possibly, but that was many
22	A. Oh, sorry. I take that back. A CPA	22 editions ago.
23	license.	23 Q. Okay. And did the New York State
24	Q. I was just going to ask you.	24 Society for CPAs have any involvement in
25	A. No. I was thinking when you say that	25 interpreting Rule 15c3-3?
	Page 256	Page 257
1	D. McIsaac	D. McIsaac
2	A. No.	2 A. No, I don't.
3	Q. Okay. And the same question for	3 Q. Have you ever written any
4	SIFMA?	4 publications?
5	A. Yes, the capital committee is	5 A. No.
6	intimately involved in the capital rules and	6 Q. Okay. In the -- you say you've spent
7	Customer Protection Rules.	7 hundreds of hours on these two reports. Do you
8	Q. Okay. Have you ever served as an	8 have a sense of how much was devoted to the
9	expert witness before?	9 original affidavit of October 5?
10	A. No. Four hours ago.	10 MR. OXFORD: Objection. Form.
11	Q. Other than in this matter?	11 You can answer if you're able.
12	A. No.	12 A. Maybe a couple hundred. I don't -- I
13	Q. Very good. Okay. Now, as an expert	13 don't recall how much exactly. Probably a
14	relating to the reports that are in front of you	14 little bit more than 200, but I don't remember.
15	right now, not what you discussed with Ms.	15 MS. NEUHARDT: I think under the
16	Bloomer this morning, how many hours of time	16 stipulation we're entitled to that
17	have you billed to the Trustee in putting	17 information, so perhaps you can provide that
18	together your opinions here?	18 to us later today or tomorrow.
19	A. On the two of these?	19 MR. OXFORD: I don't think I can get
20	Q. Uh-huh.	20 it to you later today, but I will certainly
21	A. I'd have to go back, but it was	21 take your request under advisement.
22	hundreds.	22 MS. NEUHARDT: Okay.
23	Q. Can you give me a range?	23 Q. Have you ever been involved in a SIPC
24	A. Maybe three to four hundred.	24 liquidation before?
25	Q. Do you know how much you have billed?	25 A. No.

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<p>1 D. McIsaac</p> <p>2 Q. Have you ever been involved in</p> <p>3 performing 15c3-3 calculations at the time of a</p> <p>4 merger or an acquisition?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Could you tell me when that</p> <p>7 would be?</p> <p>8 A. UBS merged with SBC on or about June</p> <p>9 29, 1998. There was a merger with various</p> <p>10 acquisitions of various assets of PaineWebber</p> <p>11 that were included as part of the acquisition of</p> <p>12 UBS Securities acquired some of the assets, and</p> <p>13 that was somewhere around November of 2000.</p> <p>14 Q. Okay.</p> <p>15 A. We at UBS purchased the prime</p> <p>16 brokerage business from ABN Amro I want to say</p> <p>17 it's around 2003, but I'm fuzzy on the time.</p> <p>18 We purchased a futures business, but</p> <p>19 that didn't have anything to do with 3-3, and</p> <p>20 probably some other asset purchases or smaller</p> <p>21 type purchase of assets or businesses along the</p> <p>22 way.</p> <p>23 Q. Okay. All right. Now we're going to</p> <p>24 get into the substance of your opinions. Under</p> <p>25 SEC Rule 15c3-3, prior to filing for</p>	<p>1 D. McIsaac</p> <p>2 liquidation, are the assets in a reserve account</p> <p>3 considered the property of the broker-dealer or</p> <p>4 the property of customers?</p> <p>5 A. The assets have to be the property of</p> <p>6 the broker-dealer because they're their assets.</p> <p>7 Q. Okay. So would customer property as</p> <p>8 defined under SEC Rule 15c3-3 ever be put in the</p> <p>9 reserve account?</p> <p>10 MR. OXFORD: Objection. Form.</p> <p>11 You can answer.</p> <p>12 A. Customer's property that they own,</p> <p>13 such as securities, would be included in the</p> <p>14 reserve formula based on an allocation of those</p> <p>15 assets and the use of those assets.</p> <p>16 Q. But would the securities be placed in</p> <p>17 the reserve account?</p> <p>18 A. In the 15c3 reserve account?</p> <p>19 Q. Correct.</p> <p>20 A. No.</p> <p>21 Q. Okay. Do you know how many accounts</p> <p>22 LBI had that comprised its reserve account under</p> <p>23 SEC Rule 15c3?</p> <p>24 A. You'll have to define what you mean by</p> <p>25 "accounts." I don't --</p>
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<p>1 D. McIsaac</p> <p>2 Q. Well, they -- are you aware that there</p> <p>3 was a bank account at Wells Fargo that was used</p> <p>4 for part of the reserve account?</p> <p>5 A. There was a, I believe, a reserve</p> <p>6 formula account, an account for the benefit of</p> <p>7 customers at Wells Fargo.</p> <p>8 Q. Correct. Do you know how many such</p> <p>9 accounts LBI held?</p> <p>10 A. If my memory is correct, it was three</p> <p>11 or four, I believe.</p> <p>12 Q. Okay. And do you remember what banks</p> <p>13 those were at other than Wells Fargo, which we</p> <p>14 have discussed?</p> <p>15 A. I believe there might have been</p> <p>16 something at JPMorgan, but I don't remember</p> <p>17 exactly, and I don't remember the other two.</p> <p>18 Q. What was the total amount as of</p> <p>19 September 19, 2008 that was in LBI's reserve</p> <p>20 accounts?</p> <p>21 A. I'd have to look in my report for the</p> <p>22 exact number, but I believe it was about a</p> <p>23 billion-17 -- a billion-760 million, something</p> <p>24 on that nature.</p> <p>25 Q. Could you show me in your report where</p>	<p>1 D. McIsaac</p> <p>2 you got that number?</p> <p>3 MR. OXFORD: Amy, are you asking a</p> <p>4 question where he got it or where it is in</p> <p>5 the report?</p> <p>6 MS. NEUHARDT: It's the source, what</p> <p>7 his source is for the -- his testimony that</p> <p>8 that is the total amount that was locked up</p> <p>9 as of that date.</p> <p>10 MR. OXFORD: Okay.</p> <p>11 A. So not where it is in here?</p> <p>12 Q. Hum?</p> <p>13 A. Not where --</p> <p>14 Q. Well --</p> <p>15 A. I'm confused.</p> <p>16 Q. -- if it's not in there, I would like</p> <p>17 to know what it is that you did rely upon. And</p> <p>18 we do have materials that your counsel -- LBI's</p> <p>19 counsel produced that you purported to rely on.</p> <p>20 And you can check in there if you want, but if</p> <p>21 it's attached to your report, that would be</p> <p>22 easier.</p> <p>23 A. You'll have to give me a minute to go</p> <p>24 through it. I don't know if it's ...</p> <p>25 Q. While you're looking, I can ask the</p>

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1 D. McIsaac	1 D. McIsaac
2 question, did you look at the bank account	2 excess in the reserve account, is that held for
3 statements for each of the three or four	3 the exclusive benefit of customers?
4 accounts that we discussed earlier?	4 A. Everything in that account is held for
5 A. No. The Trustee's financial	5 the exclusive benefit of customers.
6 professionals provided me with the schedule of	6 Q. So is it your testimony that even
7 what was in the accounts.	7 amounts that are not required to be held there
8 Q. And by "financial professionals," who	8 are for the benefit of customers?
9 are you referring to?	9 MR. OXFORD: Objection. Asked and
10 A. I believe it came from legal counsel.	10 answered. You can answer again.
11 Q. From legal counsel. It didn't come	11 A. If it's held in there, it's for the
12 from Deloitte?	12 exclusive benefit of customers.
13 A. It might come from Deloitte	13 Q. Okay. Is a broker-dealer allowed to
14 eventually, but it was given to me by legal	14 withdraw excess?
15 counsel.	15 MR. OXFORD: Objection. You can
16 Q. And did you do any independent	16 answer.
17 investigation of the correctness of the	17 A. A broker-dealer can make withdrawals
18 materials supplied to you by legal counsel?	18 and deposits based on calculations.
19 A. No.	19 Q. Okay. And is there any requirement
20 Q. You know what, why don't we have you	20 that a broker-dealer receive SEC approval before
21 look for that on a break and go on in an effort	21 making a withdrawal of excess?
22 to --	22 A. I do not believe there's any
23 A. Sure.	23 requirement to get the approval of the SEC in
24 Q. -- save time.	24 the normal course.
25 Under SEC Rule 15c3-3, if there is an	25 Q. Okay. Now, you qualified your last
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1 D. McIsaac	1 D. McIsaac
2 answer by saying you did not believe there was a	2 A. Page 13.
3 requirement to get SEC approval in the normal	3 Q. No, paragraph 13, page 6.
4 course?	4 A. Oh, I'm sorry. I thought you said
5 A. Correct.	5 page 13.
6 Q. Do you believe there's a requirement	6 Q. No, my apologies.
7 to get SEC approval at any other time?	7 A. Okay.
8 A. Well, I would assume if you're in	8 Q. Okay. Second sentence says, "The only
9 liquidation, you can't move moneys out of the	9 relevant point in time for the purpose of
10 account without the approval of the S.E.C., but	10 determining the accuracy of LBI's reserve
11 I don't know that for a fact.	11 calculation as of September 19, 2008, is
12 Q. Okay. Are you basing your assumption	12 September 19, 2008."
13 on anything in SEC Rule 15c3-3?	13 Why -- why do you believe that
14 A. I don't believe anything I've seen	14 September 19, 2008 is the relevant date?
15 there. What I've seen in the rules is basically	15 A. That's the -- that's when the
16 you have to do a withdrawal -- a calculation	16 calculation is as of. So anything that has
17 before you can do a withdrawal.	17 happened as of that date or known as of that
18 Q. Okay. In your rebuttal report,	18 date is what goes into the formula.
19 paragraph 13, you state that the -- I'll give	19 Q. Why -- well, were you told to do a
20 you a moment to get to that. In the second	20 calculation as of September 19, 2008, or did you
21 sentence you state, "The only relevant point in	21 independently decide that that was the relevant
22 time" --	22 date for a calculation?
23 A. Excuse me. Excuse me. What	23 MR. OXFORD: Objection to the form.
24 paragraph?	24 That misstates the facts and the evidence,
25 Q. 13. I'm sorry.	25 and I think you're misreading his reports.

<p style="text-align: right;">Page 266</p> <p>1                   D. McIsaac</p> <p>2                   You can answer if you can.</p> <p>3                   A. I believe the 19th of September 2008</p> <p>4                   was the last reserve requirement prepared by</p> <p>5                   Lehman prior to entering into SIPC protection.</p> <p>6                   Q. Okay. Do you know the date that LBI</p> <p>7                   entered into SIPC protection?</p> <p>8                   A. I believe it was sometime on or about</p> <p>9                   the 19th of September.</p> <p>10                  Q. Okay. Do you know if they had</p> <p>11                  performed a calculation on that date prior to</p> <p>12                  entering into SIPC liquidation?</p> <p>13                  MR. OXFORD: Objection to form.</p> <p>14                  A. I have not seen any as of September</p> <p>15                  18, I don't believe.</p> <p>16                  Q. Have you seen any as of the morning of</p> <p>17                  September 19?</p> <p>18                  A. I'm sorry, as of the morning of</p> <p>19                  September 19th? As of what period of time?</p> <p>20                  Q. Prior to entering into liquidation on</p> <p>21                  the day of the 19th?</p> <p>22                  A. Based on what period? Based on what</p> <p>23                  ending period?</p> <p>24                  Q. Any ending period.</p> <p>25                  A. You can only do it at the end of a</p>	<p style="text-align: right;">Page 267</p> <p>1                   D. McIsaac</p> <p>2                   day. You can't do it in the middle of a day.</p> <p>3                   Q. Okay. So then wasn't the last</p> <p>4                   calculation actually performed by LBI prior to</p> <p>5                   entering into liquidation done on the 17th?</p> <p>6                   A. I don't think so. I thought they were</p> <p>7                   required to do a calculation as of the close of</p> <p>8                   business on the 19th.</p> <p>9                   Q. Even if they were no longer in</p> <p>10                  business?</p> <p>11                  A. I don't know what the whole rule is</p> <p>12                  around SIPC, but I believe they were required to</p> <p>13                  do a calculation as of the close of business the</p> <p>14                  19th because that was the last day of business.</p> <p>15                  Q. Could you show me in -- we can get you</p> <p>16                  Rule 15c3-3. We're going to mark that as</p> <p>17                  Exhibit 694.</p> <p>18                  (Exhibit 694, Rule 15c3-3, marked for</p> <p>19                  identification, as of this date.)</p> <p>20                  Q. I've put before you SEC Rule 15c3-3.</p> <p>21                  Could you tell me where in Rule 15c3-3 LBI would</p> <p>22                  have been required to do a reserve calculation</p> <p>23                  on the 19th despite entering into liquidation on</p> <p>24                  that day?</p> <p>25                  MR. OXFORD: Objection. Form.</p>
<p style="text-align: right;">Page 268</p> <p>1                   D. McIsaac</p> <p>2                   Misstates the witness's testimony.</p> <p>3                   You can answer.</p> <p>4                   A. I don't think there's anything in Rule</p> <p>5                   15c3-3 that says when anybody is supposed to do</p> <p>6                   a calculation as opposed to the 19th. I believe</p> <p>7                   it says that you do calculations as of Friday</p> <p>8                   and the last business day of the month.</p> <p>9                   Q. Okay.</p> <p>10                  A. That was their last business day.</p> <p>11                  Q. Is it your position that 15c3-3</p> <p>12                  continues to apply after entering into SIPC</p> <p>13                  liquidation?</p> <p>14                  A. I would think you would have to do a</p> <p>15                  final calc if it was a Friday close of business</p> <p>16                  to account for all your assets in this process.</p> <p>17                  Q. And the basis for that belief is?</p> <p>18                  A. The last day of business was a Friday.</p> <p>19                  I don't know if you would have to do it if the</p> <p>20                  last day of business was a Wednesday, but their</p> <p>21                  last day of business was a Friday.</p> <p>22                  Q. So it's your position that even though</p> <p>23                  at the end of the day of business on that Friday</p> <p>24                  they were in liquidation, they still would have</p> <p>25                  had to do a 15c3-3 calculation?</p>	<p style="text-align: right;">Page 269</p> <p>1                   D. McIsaac</p> <p>2                   A. I believe so. That's my opinion.</p> <p>3                   Q. Okay. And that is based on?</p> <p>4                   A. You're supposed to do calculations as</p> <p>5                   of Friday or month end, and that was a Friday of</p> <p>6                   business.</p> <p>7                   Q. So you have no other basis for your</p> <p>8                   opinion that a 15c3-3 calculation would have</p> <p>9                   been required even though they had entered into</p> <p>10                  liquidation on that day?</p> <p>11                  A. I believe the SEC required a 3-3</p> <p>12                  calculation to be done, but I don't know if I</p> <p>13                  can point to anything that says that.</p> <p>14                  Q. When you say the SEC required it, do</p> <p>15                  you mean by rule or are you talking about events</p> <p>16                  as of that day, communications that day?</p> <p>17                  A. I thought by rule they required it as</p> <p>18                  of the close of business on Friday. I think</p> <p>19                  they -- did they go into -- I believe they went</p> <p>20                  into liquidation after the markets closed, which</p> <p>21                  would be the close of their business day.</p> <p>22                  Q. And if that were not the case, would</p> <p>23                  that change your opinion in any way?</p> <p>24                  A. Then I would leave it up to the</p> <p>25                  regulators to determine if a calculation had to</p>

<p style="text-align: right;">Page 270</p> <p>1                   D. McIsaac    2 be done at that point in time.    3           Q. So you don't have an opinion, then, if    4 the liquidation started prior to the close of    5 business on Friday?    6           A. If the --    7            MR. OXFORD: Objection. Form.    8            You can answer.    9           A. If the liquidation was at 1 o'clock --    10 9 o'clock in the morning, I might have a    11 different opinion, but it was I believe after    12 the close of business. I think it was finally    13 approved sometime Saturday morning.    14           Q. Okay.    15           A. And I'm assuming --    16           Q. I'm trying to make sure you've    17 answered my question. I don't think we've    18 established what time it was.    19           If it did happen prior to the close of    20 business, does that change your opinion?    21           MR. OXFORD: Objection. Form.    22           You can answer.    23           A. I don't know. I don't have an opinion    24 on it.    25           Q. Okay. Now, under -- for a moment</p>	<p style="text-align: right;">Page 271</p> <p>1                   D. McIsaac    2 we'll assume that the 19th is the appropriate    3 date, and I believe you said that under the    4 SEC -- well, rather than recharacterize your    5 testimony, how often does an operating    6 broker-dealer have to do its reserve    7 calculation?    8           A. It's based on what type of    9 broker-dealer it is. One of Lehman's stature    10 had to do one weekly and as of month end.    11           Q. And you said normally it was done on    12 Friday afternoons, correct?    13           A. As of close of business Friday and as    14 of month end.    15           Q. Okay. Now, if a calculation done on    16 the -- done as of the close of business on    17 Friday showed a shortfall, at what time would    18 the broker-dealer be required to make up the    19 shortfall?    20           A. 10 A.M. the second business day    21 following the day of closing. So on a Friday,    22 as long as Monday was a business day, 10 o'clock    23 Tuesday.    24           Q. Okay. And that's under Rule 15c3-3 as    25 well?</p>
<p style="text-align: right;">Page 272</p> <p>1                   D. McIsaac    2           A. Yes.    3           Q. Now, in this case, Lehman was no    4 longer operating as of 10 A.M. the following    5 Tuesday morning, correct?    6           A. I believe that's the case.    7           Q. So as of Friday, the 19th, it would    8 not have had an obligation to actually deposit a    9 shortfall into the account?    10           A. I believe --    11           MR. OXFORD: Objection to form.    12           You can answer.    13           A. I believe Lehman was still a    14 broker-dealer and had not issued a BDW as of    15 that point in time.    16           Q. I'm sorry, what is a BDW?    17           A. Withdrawal as a broker-dealer.    18           Q. Okay. So is it your testimony that    19 even after filing for liquidation LBI was an    20 operating broker-dealer?    21           A. No. I'm saying they didn't file a BDW    22 and still would have been, I think, required to    23 make a deposit on Tuesday morning if they had to    24 add to their deposit.    25           Q. Despite the fact that a Trustee had</p>	<p style="text-align: right;">Page 273</p> <p>1                   D. McIsaac    2 been appointed and was running the operations?    3           A. (Witness nods.)    4           Yes, I'm sorry.    5           Q. You do need to-answer.    6           A. I know that.    7           Q. Could you show me or could you tell me    8 what the source of your opinion on that is?    9           A. I don't think there's anything in the    10 literature that says that. I don't think    11 there's anything in the literature that points    12 to a broker-dealer going out of business on a    13 Friday and whether or not it has to make its    14 deposit on Tuesday.    15           Q. So you're not basing your opinion on    16 anything?    17           A. Just --    18           MR. OXFORD: Objection. Form. It's    19 not what the witness said.    20           But you can answer.    21           A. Practice, common practice, and I would    22 think they would do their last computation.    23           Q. You say common practice. How often    24 have you been involved in a broker-dealer that    25 has gone into liquidation?</p>

<p>1 D. McIsaac</p> <p>2 A. Never.</p> <p>3 Q. Okay. Let's turn to the discussion of</p> <p>4 FID accounts, and in your original report that</p> <p>5 was at paragraphs -- I didn't put it down</p> <p>6 here -- it starts on page 13 of your original</p> <p>7 report. It's relating to Fixed Income Division</p> <p>8 prime broker clients that are being referred to</p> <p>9 as FID accounts?</p> <p>10 A. That's correct.</p> <p>11 Q. In your original report you stated</p> <p>12 that securities had been liquidated by Chase, is</p> <p>13 that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And you decided that was an error for</p> <p>16 your rebuttal report; is that correct?</p> <p>17 A. No, for my additional affidavit that</p> <p>18 was put in.</p> <p>19 Q. Okay. I apologize. But your opinion</p> <p>20 on that has changed?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Now, from where did you get the</p> <p>23 number of 891 million as being the -- yes, as</p> <p>24 being the relevant number? And for reference,</p> <p>25 that would be in paragraph 35 of your original</p>	<p>1 D. McIsaac</p> <p>2 affidavit.</p> <p>3 A. That's a combination of the 630</p> <p>4 million of assets and the 281 million -- \$258</p> <p>5 million of the cash.</p> <p>6 Q. Okay. Well, I'm not seeing citations</p> <p>7 for either the 630 million number or the 258</p> <p>8 million number. So where did you get those</p> <p>9 numbers?</p> <p>10 A. They were provided to me by the</p> <p>11 Trustee's financial advisor.</p> <p>12 Q. Did you do any independent</p> <p>13 investigation of the accuracy of those numbers?</p> <p>14 A. I reviewed some documents that would</p> <p>15 have shown the numbers there, would have shown</p> <p>16 the accounts with the balances in them and the</p> <p>17 asset value.</p> <p>18 Q. Are those documents attached to your</p> <p>19 affidavit?</p> <p>20 A. I don't know if they are or not. I</p> <p>21 don't think so.</p> <p>22 Q. Did you speak to anybody about the</p> <p>23 accuracy of those numbers?</p> <p>24 A. The Trustee and their financial</p> <p>25 advisors.</p>	
	<p>Page 276</p> <p>1 D. McIsaac</p> <p>2 Q. By "financial advisors" are you</p> <p>3 referring to legal counsel again?</p> <p>4 A. It would have been legal counsel</p> <p>5 and/or their financial advisors, Deloitte.</p> <p>6 Q. Deloitte. Can you tell me who you</p> <p>7 spoke to at Deloitte?</p> <p>8 A. Chris Harris and Marlo Karp.</p> <p>9 I'm sorry, I didn't know if that was</p> <p>10 privileged.</p> <p>11 MR. OXFORD: If I might, let me</p> <p>12 perhaps make this go a little more smoothly.</p> <p>13 To the extent, Mr. McIsaac, you relied upon</p> <p>14 advice from Deloitte -- or, not advice, you</p> <p>15 relied on information as a source of the</p> <p>16 facts upon which you base your opinion</p> <p>17 whether in your original affidavit or</p> <p>18 supplemental affidavit or your rebuttal</p> <p>19 report, then I think it's fine for you to</p> <p>20 answer those questions.</p> <p>21 To the extent Ms. Neuhardt's questions</p> <p>22 call for discussions with Deloitte or any</p> <p>23 other person that you did not rely on as a</p> <p>24 source of information for the opinions</p> <p>25 expressed in these affidavits and reports,</p>	<p>Page 277</p> <p>1 D. McIsaac</p> <p>2 then I will instruct you not to answer that</p> <p>3 question.</p> <p>4 THE WITNESS: Okay. Thank you.</p> <p>5 Q. I'm trying to find out the underlying</p> <p>6 source of the facts underneath your report.</p> <p>7 A. It would have been either Chris Harris</p> <p>8 or Marlo Karp.</p> <p>9 Q. Did you speak to any employees of the</p> <p>10 Trustee?</p> <p>11 A. No, I did not. Well, employees of the</p> <p>12 Trustee? Legal counsel?</p> <p>13 Q. No.</p> <p>14 MR. OXFORD: Maybe we can clear things</p> <p>15 up. Does your question, Amy, go to the --</p> <p>16 MS. NEUHARDT: I'm going to the TSA</p> <p>17 employees, basically.</p> <p>18 MR. OXFORD: Okay. Because that's</p> <p>19 different than they're not employees of the</p> <p>20 trustee.</p> <p>21 MS. NEUHARDT: But they're performing</p> <p>22 services for him.</p> <p>23 MR. OXFORD: Sure. Maybe we can ask</p> <p>24 this again and make sure Mr. McIsaac</p> <p>25 understands the question.</p>

<p style="text-align: center;">Page 278</p> <p>1                   D. McIsaac</p> <p>2     Q. Are you aware that there are persons</p> <p>3     who are normally employed by Barclays who work</p> <p>4     entirely at the direction of the Trustee?</p> <p>5     MR. OXFORD: Objection.</p> <p>6     A. I'm aware that there are employees of</p> <p>7     Barclays doing work under a TSA. I don't know</p> <p>8     what they're doing or who they are.</p> <p>9     Q. When you say "TSA," what are you</p> <p>10   referring to?</p> <p>11    A. Some kind of transfer services</p> <p>12   agreement I believe is what it's call in the</p> <p>13   industry.</p> <p>14    Q. Do you understand that those employees</p> <p>15   are working for the Trustee?</p> <p>16    A. I don't know who they're working for.</p> <p>17    Q. Okay. Did you speak to any of those</p> <p>18   individuals in relation to the FID accounts?</p> <p>19    A. No.</p> <p>20    Q. Did you speak to any of those</p> <p>21   individuals in relation to anything in your</p> <p>22   reports?</p> <p>23    A. No.</p> <p>24    Q. How did you determine that the \$891</p> <p>25   million were customer assets?</p>	<p style="text-align: center;">Page 279</p> <p>1                   D. McIsaac</p> <p>2     A. They were assets in the customer</p> <p>3     accounts that went -- that went into a -- an</p> <p>4     account at Chase designated for the benefit of</p> <p>5     customers.</p> <p>6     Q. What I'm trying to understand is what</p> <p>7     the source is for your statement that they were</p> <p>8     assets in the customer accounts.</p> <p>9     A. I received a document that listed the</p> <p>10   accounts and the account -- the accounts and the</p> <p>11   money, monetary value and the security market</p> <p>12   value in those accounts.</p> <p>13    Q. Did you do any independent</p> <p>14   investigation of the accuracy of that document?</p> <p>15    A. No, I did not. I believe I reviewed</p> <p>16   the stipulation agreement that might have also</p> <p>17   included information on those accounts.</p> <p>18    Q. Is that stipulation agreement attached</p> <p>19   to your report?</p> <p>20    A. I don't believe it is.</p> <p>21    Q. Sorry?</p> <p>22    A. No. No.</p> <p>23    MR. OXFORD: Just to move this along,</p> <p>24   Amy, are you referring to any report or a</p> <p>25   specific report?</p>
<p style="text-align: center;">Page 280</p> <p>1                   D. McIsaac</p> <p>2     MS. NEUHARDT: He said that there's a</p> <p>3     document he looked at that helped him</p> <p>4     determine whether or not the assets that he</p> <p>5     described in his report as FID assets --</p> <p>6     that he describes as customer assets, he</p> <p>7     said he looked at a document and that told</p> <p>8     him they were customer assets. And then I</p> <p>9     asked if he did any independent</p> <p>10   investigation, and he first said no, but</p> <p>11   then he said he may have looked at a</p> <p>12   stipulation, and I asked whether or not he</p> <p>13   attached that in his report.</p> <p>14    MR. OXFORD: Okay. Just for ease, I</p> <p>15   can represent that it's been produced to you</p> <p>16   and I believe it actually may be attached to</p> <p>17   his report, but I'll --</p> <p>18    A. Yes, you say reports. I'm not sure</p> <p>19   which report. I don't think it's in the --</p> <p>20    Q. When I say report, either any of the</p> <p>21   three reports sitting in front of you -- I guess</p> <p>22   it's two reports and one supplemental affidavit.</p> <p>23    And what was your source for stating</p> <p>24   that these particular assets were seized?</p> <p>25    A. Chase took control of the assets and</p>	<p style="text-align: center;">Page 281</p> <p>1                   D. McIsaac</p> <p>2     did not return them to the Trustee.</p> <p>3     Q. What's your source for that?</p> <p>4     A. The documents that were provided to me</p> <p>5     by the financial.</p> <p>6     Q. On this one I'm going to need you to</p> <p>7     show me which documents. If you could look at</p> <p>8     your report and show me which documents you're</p> <p>9     using to rely on for the prospect that they were</p> <p>10   seized. I understand, but I need you to</p> <p>11   identify what you're relying on for that. So --</p> <p>12    A. I have a list of assets. I don't</p> <p>13   believe I have any -- anything -- I don't think</p> <p>14   it's in my documents. I can look for you to see</p> <p>15   in the extra documents if we provided anything</p> <p>16   from Chase showing that they were moved out of</p> <p>17   Chase's account. I believe somewhere in here we</p> <p>18   have the accounts showing zero balances in them.</p> <p>19    Q. Do you know what day they were seized</p> <p>20   if in fact they were seized?</p> <p>21    A. Chase, from my understanding, on or</p> <p>22   about the 18th of September --</p> <p>23    Q. On the 18th?</p> <p>24    A. I'm not finished.</p> <p>25    -- shut off access to Lehman to have</p>

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1 D. McIsaac	1 D. McIsaac
2 access to the accounts. Somewhere along that	2 Q. So you don't know one way or the
3 period of time, the assets were taken out of the	3 other?
4 accounts of Lehman.	4 A. I'm not sure what the relevance would
5 Q. So when you say shut off access,	5 be of that if they had no access to those assets
6 you're referring to shutting off electronic	6 as of the 19th.
7 ability to monitor --	7 Q. Well, again, are you equating the
8 A. Yes.	8 inability to monitor the accounts with seizure?
9 Q. -- the accounts?	9 A. No, I'm saying that they didn't know
10 A. The screens were shut off.	10 if they had them or not had them at the 19th
11 Q. Are you equating that to seizure?	11 because they had no access to their accounts.
12 A. No. I'm just saying that at that	12 Q. Are you saying that the inability to
13 point in time, LBI was not aware of what was in	13 monitor alone would make it no longer a good
14 the accounts.	14 control location?
15 Q. Okay. But do you know when the assets	15 A. No, I just said that they wouldn't
16 were actually seized?	16 have known at that point in time if they were in
17 A. I believe the reports that came from	17 the accounts or not.
18 Chase, and I'm looking for them in here because	18 Q. So the mere fact that they could not
19 I believe they're in here, showed that, as of	19 monitor would not have turned those accounts
20 the 19th, they were removed from the accounts.	20 into a -- strike that.
21 Q. Do you know if it was before or after	21 MR. OXFORD: And Amy, just on the
22 LBI filed for liquidation -- sorry, filed for	22 seize question, maybe we could add that to
23 SIPC protection?	23 the list of things you want Mr. McIsaac to
24 A. I don't believe Chase put a time stamp	24 look at at a break and it'll speed things up
25 on when they removed them out of the accounts.	25 a little bit.
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1 D. McIsaac	1 D. McIsaac
2 MS. NEUHARDT: Uh-huh.	2 A. I believe there were "no lien letters"
3 Q. Is electronic access required to be a	3 from Chase with these accounts.
4 good control location under 15c3-3?	4 Q. Were they revoked on or before the
5 A. No.	5 19th?
6 Q. Okay. So it's the seizure that is	6 A. I believe there was certain ambiguity
7 critical to your opinion on this?	7 on whether or not those accounts were being used
8 A. Yes.	8 by Chase for credit purposes or reviewing the
9 Q. But you do not know at what time on	9 equity of LBI at points in time throughout the
10 the 19th these assets were seized?	10 year.
11 A. No, I do not.	11 Q. I don't think that answers my
12 Q. Okay. Now, what are the requirements	12 question. Do you know if the "no lien letters"
13 of a good control location under 15c3-3?	13 were revoked on or before the 19th?
14 A. You should have a letter from the	14 A. I do not know if they were revoked
15 bank.	15 before.
16 Q. A "no lien letter"?	16 Q. Okay. Now, you refer in your report
17 A. Stating they have no liens on those	17 regarding the FID assets to an overdraft notice;
18 assets.	18 is that correct?
19 Q. Are there any other requirements?	19 A. Which report are we talking about now?
20 A. I believe that the language in the	20 Q. Both of them, actually. I'm still
21 letter talks to no lien, except for payment of	21 just talking about the FID reports.
22 certain fees and that.	22 A. Uh-huh.
23 Q. Now, do you know if there was a "no	23 Q. Did you -- did you review the
24 lien letter" from Chase with regards to these	24 overdraft notice?
25 accounts?	25 A. I've seen documentation that showed

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1 D. McIsaac	1 D. McIsaac
2 that it was an overdraft at Chase.	2 A. I did not.
3 Q. Did you do any investigation into --	3 Q. Okay. If that in fact occurred, would
4 did you do any investigation into whether or not	4 that change your opinion in any way?
5 the notice was properly issued?	5 MR. OXFORD: Objection to the form.
6 A. No.	6 Assumes facts not in evidence.
7 Q. Okay. And did you inquire --	7 MS. NEUHARDT: I'm sorry, I couldn't
8 A. I --	8 hear you.
9 Q. Sorry?	9 MR. OXFORD: You can answer.
10 A. I said, no, I don't know what notice	10 A. If Chase sent another report to Lehman
11 of properly issued would be in an overdraft	11 at that time saying we originally told you you
12 account. Usually you would get a statement from	12 had an overdraft of 20 billion, we were wrong,
13 the bank or you would see it online. I don't	13 you have cash of 10 billion, yes, that would
14 know if that constitutes a notice.	14 have an impact on what I thought. If that's
15 Q. Did you do any investigation into	15 what your question was.
16 whether or not Chase had acknowledged to Lehman	16 Q. That's not my question. My question
17 on the 19th that the notice was improperly	17 is whether if Chase informed people at Lehman
18 issued?	18 that the notice was issued as a mistake, would
19 A. What notice now?	19 that change your opinion?
20 Q. You told me you reviewed an overdraft	20 MR. OXFORD: Same objection.
21 notice.	21 A. If they said that -- if they gave
22 A. And did Chase say that it was	22 notice that there was no overdraft and the
23 improperly issued? No.	23 assets weren't used to secure the overdraft,
24 Q. I'm asking if you investigated whether	24 yes, it would change my opinion.
25 or not that occurred?	25 Q. Did you make any effort to determine
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1 D. McIsaac	1 D. McIsaac
2 whether or not LBI actually attempted to	2 MR. OXFORD: Objection to form.
3 withdraw any money from the Chase account on	3 A. I've been informed that the screens
4 Friday, September 19?	4 were shut down. So having access to it other
5 A. No, I did not.	5 than via the screens, I'm not sure how they
6 Q. Did you make any efforts to determine	6 would have it other than maybe verbal
7 whether or not LBI actually attempted to	7 discussions with Chase.
8 withdraw any securities from the Chase account	8 Q. The mere fact that the screens were
9 as of September 19?	9 shut down would not substantively affect their
10 A. As I'm aware, the screens were shut	10 ability to withdraw money; is that correct?
11 down, so I don't know how they would have done	11 MR. OXFORD: Objection. Form.
12 that without electronically notifying, unless	12 A. I assume they could send instructions
13 they would have done it via overnight letting	13 to Chase to do it, and if Chase so desired, they
14 Chase know what deliveries and receipts to make,	14 could follow that.
15 but I did not do any inquiries into that.	15 Q. Okay. If Chase in fact actually
16 Q. Are you saying that telephone	16 seized assets on the 19th, would that have
17 communications no longer work?	17 affected the reserve calculation done by LBI on
18 A. I don't know if anybody made a	18 the 17th?
19 telephone communication to them. I know the	19 A. If there was ambiguity or if the "no
20 screens were down and that's the normal mode of	20 lien" language for those accounts was not in
21 moving securities.	21 force, then yes, that would have affected any
22 Q. So you don't actually know whether or	22 other calculation done at that point in time.
23 not LBI could have had access to that -- to the	23 Q. Have you seen any evidence that the
24 cash and securities in the Chase accounts on	24 "no lien letter" was not enforced as of the
25 September 19, 2008?	25 17th?

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1 D. McIsaac	1 D. McIsaac
2 A. I have seen nothing that said they --	2 A. Yes, it is.
3 it was not enforced at that time.	3 Q. Could you show me where in this
4 Q. Would your answer be the same as of	4 exhibit?
5 the 12th?	5 A. Could you give me the interpretation
6 A. The same. I have seen nothing before	6 memos? It would be a lot easier to find it.
7 that time.	7 Q. Absolutely. Yes. That would be in
8 Q. Okay. Now, if there were -- if these	8 Exhibit 695.
9 assets were seized on the 19th and it did cause	9 (Exhibit 695, Customer Protection -
10 a need to adjust the amount in the reserve	10 Reserves and Custody of Securities SEA Rule
11 account, at what time -- when would that deposit	11 15c3-3, marked for identification, as of
12 be required?	12 this date.)
13 A. I believe I answered that before. 10	13 A. I believe it's on page 2625 of the
14 A.M. Tuesday morning, if that deposit was	14 FINRA Interpretation Handbook.
15 required.	15 Q. Okay. What portion of this on page
16 Q. Okay. Could you just tell me which	16 2625?
17 regulation it is that would require a credit in	17 A. It says "Proprietary Bank Loans versus
18 the reserve formula for the seizure of assets on	18 Customer Account Long."
19 the 19th?	19 Q. Okay. Do you rely on anything else
20 A. I believe the credit goes into the	20 for your opinion that if there were assets
21 reserve formula because you would have customer	21 seized, there would have to be a credit to the
22 assets allocating to a loan.	22 reserve calculation?
23 Q. Okay.	23 A. I believe there are other portions
24 A. A bank loan.	24 within here that talk about the same thing --
25 Q. Is that in 15c3-3?	25 Q. This is the proprietary source?
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1 D. McIsaac	1 D. McIsaac
2 A. Customer property allocating to	2 Q. Were you asked by the Trustee to
3 proprietary bank loan.	3 identify transactions or events that might have
4 Q. Okay. Now, I'm going to move on to	4 required adjustments on the debit side of the
5 coding errors. Your rebuttal report discusses	5 reserve calculation?
6 two alleged coding errors: One regarding the	6 A. All issues brought to my attention by
7 classification of Woodlands Bank as a customer	7 the Trustee would have been reviewed. There was
8 or non-customer?	8 no indication of only reviewing the credit side.
9 A. Right.	9 In fact, the coding errors did have an impact on
10 Q. And another relating to an error in	10 both the debit and credit side.
11 the ADP system; is that correct?	11 Q. Okay. Did you make any independent
12 A. Correct.	12 effort to look for transactions or events that
13 Q. Are you aware of any other alleged	13 would have required an adjustment to the reserve
14 coding errors that would have affected the	14 calculation other than what was identified by
15 credit side of LBI's reserve calculation as of	15 the Trustee for you?
16 September 19, 2008?	16 A. Nothing else was brought to my
17 A. The ADP -- there were two instances of	17 attention that would have required that.
18 a ADP. It was certain accounts were not -- were	18 Q. I understand. Did you make any
19 picked up as customers. They should have been	19 independent effort to look for additional
20 non-customer, as well as the allocation. But	20 transactions or events?
21 they're both this here.	21 A. I did not.
22 Q. So there's nothing other than what is	22 Q. Do you know if the Trustee looked for
23 discussed in your reports in the way of coding	23 errors that would have caused an adjustment on
24 errors that you have identified?	24 the debit side of the reserve formula?
25 A. That I am aware of at this time, no.	25 A. I believe the Trustee and their

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1 D. McIsaac	1 D. McIsaac
2 advisors looked for all and any adjustments that	2 Q. The process of identifying -- the
3 would have impacted the 9/19 calculation.	3 process of identifying any and all adjustments
4 Q. Do you know if the Trustee and its	4 that would have impacted the 9/19 calculation?
5 advisors have completed its -- their analysis of	5 A. I believe they're still doing work as
6 any and all adjustments that would have impacted	6 it relates to 9/19, and as I said in my rebuttal
7 the 9/19 calculation?	7 report, I don't think anything came to their
8 A. I believe the Trustee and their	8 attention by the time I filed that report.
9 advisors are still researching facts and figures	9 Q. Okay. In paragraph 16 of your
10 as of the 19th of September, and if anything was	10 rebuttal report, you say that the Woodland
11 to come to their attention, I believe they would	11 assets had actually been seized. What did you
12 bring it up at that point in time. It was my	12 base that on?
13 understanding as of the time I filed the	13 A. They were part of the assets that were
14 rebuttal report that no additional items have	14 in the free box that was taken by Chase.
15 been found.	15 Q. So it's the same Chase matter as we've
16 Q. So you believe the analysis is still	16 already discussed?
17 ongoing?	17 A. No. These were never locked up in a
18 A. I believe it's still in process, yes.	18 seg account because the account was coded as a
19 Q. But you do believe that the Trustee	19 non-customer, not a customer.
20 and its financial advisors have engaged in the	20 Q. On what day do you believe these were
21 process?	21 seized?
22 MR. OXFORD: Objection. Form.	22 A. When Chase seized all the assets
23 Q. Do you understand the question?	23 versus the bank loan, which I assume was the
24 A. I don't know what process you're	24 19th.
25 talking about they engaged in.	25 Q. Which you assume was the 19th?
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1 D. McIsaac	1 D. McIsaac
2 A. Yes.	2 Barclays.
3 Q. Okay. In rebuttal paragraph 18, this	3 Q. I'm going to mark as Exhibit 696 a
4 is referring to I believe the ADP Broadridge	4 declaration of Robert Martini dated April 5,
5 issue?	5 2010, and after she hands it to you my first
6 A. Uh-huh.	6 question will be have you seen it before.
7 Q. You say that, "As part of a review	7 (Exhibit 696, Declaration of Robert
8 performed by Barclays," and you emphasize "by	8 Martini, marked for identification, as of
9 Barclays," "at the request of the S.E.C.,	9 this date.)
10 Barclays performed a partial recalculation of	10 A. No, I have not.
11 the reserve formula to adjust for these known	11 Q. Would you read paragraphs 5 through 7?
12 discrepancies which revealed, as a result of the	12 Let me know when you're through.
13 coding errors, a \$213 million shortfall."	13 (Document review.)
14 And I -- you can turn to Exhibit 8 if	14 A. I've read it. I'm sorry, 5 through 7?
15 you want, that's what you cite, but I'd like to	15 Okay.
16 know what your basis is for saying that Barclays	16 Q. Okay. Assuming that what Mr. Martini
17 did a recalculation --	17 says in his declaration is true, would that
18 A. I believe Barclays employees were the	18 change your opinion that Barclays performed a
19 ones sending the information to ADP and	19 recalculation of the reserve formula as set
20 requesting that a recalculation was done.	20 forth in paragraph 18 of your rebuttal report?
21 Q. Okay. And do you know whether those	21 A. I saw a letter going from Barclays to
22 Barclays employees were Barclays employees	22 Broadridge directing them to make the changes.
23 performing work for the Trustee under the TSA?	23 They did all the research and directed them to
24 A. I don't know in what capacity, but the	24 make the changes. Whether the employees who
25 letterhead on the note to ADP at Broadridge was	25 actually did the calculation were TSA employees

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1	D. McIsaac	1 D. McIsaac
2	or Barclays employees I do not know. I don't	2 MR. OXFORD: Okay. That would be
3	have the name of the employee who did it.	3 great.
4	Q. Okay. Did you speak to any of the	4 MS. NEUHARDT: There were two
5	employees on that letter?	5 things we wanted him to look for.
6	A. No, I did not.	6 Let's go off the record.
7	Q. Okay. Do you know if the	7 THE VIDEOGRAPHER: The time is 5:54.
8	recalculation that is discussed in paragraph 18	8 This is the end of the tape labeled number
9	of your Rebuttal Report was a complete	9 6. We're going off the record.
10	recalculation of the 15c3-3 requirement as of	10 (Recess.)
11	9/19 or just an adjustment for the ADP	11 THE VIDEOGRAPHER: This is the start
12	Broadridge issue?	12 of tape labeled number 7. The time is 6:23.
13	A. I believe I said in here it was just	13 We are back on the record.
14	an adjustment for the ADP Broadridge as well as	14 MS. NEUHARDT: Mr. Oxford, based on
15	the clarification of the 944 accounts.	15 our conversation off the record, you have
16	Q. By the 944 accounts, you're referring	16 some statements to put on the record about
17	to the Woodland Bank?	17 what Mr. McIsaac found during the break?
18	A. No.	18 MR. OXFORD: Yes. Mr. McIsaac, you
19	Q. No. What are you referring to?	19 had referenced a stipulation in response to
20	A. 944 accounts were other accounts	20 some questions that Amy asked you in
21	classified as customers that should have been	21 connection with the FID issue?
22	reclassified as non-customer.	22 THE WITNESS: Right.
23	MS. NEUHARDT: I'm probably at a	23 MR. OXFORD: Could you turn to your
24	halfway point if you want to take a short	24 Rebuttal Report, Exhibit 1, please.
25	break.	25 THE WITNESS: Right.
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1	D. McIsaac	1 D. McIsaac
2	MR. OXFORD: Can you identify what	2 if you could.
3	Exhibit 1, please?	3 THE WITNESS: So much easier if it was
4	THE WITNESS: The substitution	4 tabbed.
5	agreement. I apologize for calling it a	5 MS. NEUHARDT: It's been discussed.
6	stipulation. Agreement.	6 THE WITNESS: Okay, yes.
7	MR. OXFORD: Is that the document you	7 MR. OXFORD: Do you have Exhibit 28 in
8	referred to when you were talking about the	8 front of you, sir?
9	stipulation?	9 THE WITNESS: Yes, I do.
10	THE WITNESS: Yes, it was.	10 MR. OXFORD: Was that the memorandum
11	MR. OXFORD: And can you also identify	11 you referred to in your earlier testimony
12	for me what Exhibit 2 is to your Rebuttal	12 that was from Barclays Capital to
13	Report?	13 Broadridge?
14	THE WITNESS: Exhibit 2 is the summary	14 THE WITNESS: Right. This was the
15	by account of all of the FID accounts and	15 memo that went from Barclays to Broadridge
16	the assets that they had in their accounts	16 Capital.
17	as of the 19th of September.	17 MR. OXFORD: Is it your understanding
18	MR. OXFORD: Okay. Thank you. And	18 this was an analysis or review that was
19	then the other issue that I just wanted to	19 conducted by these individuals on behalf of
20	clear up, if you could turn to your original	20 LBI or Barclays Capital?
21	affidavit, which is Exhibit 691.	21 THE WITNESS: I believe they were
22	THE WITNESS: Right, those were in	22 Barclays Capital employees. They reviewed
23	693.	23 LBI and I think at the same time they
24	MR. OXFORD: Yes. And these are not	24 conducted a similar review of Barclays
25	tabbed, but I'd like you to find Exhibit 28,	25 Capital reports to determine whether or not

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1	D. McIsaac	D. McIsaac
2	they were the same issue in the ADP or	your -- is the basis for your statement in
3	Broadridge allocation matrix.	paragraph 18 of your rebuttal that Barclays
4	MR. OXFORD: Okay. Thank you.	performed a partial recalculation of the reserve
5	MS. NEUHARDT: Neil, I believe you	formula to adjust for the discrepancies
6	also said that you would provide for us --	discussed in this portion of your rebuttal
7	you would review and identify for us the	report?
8	materials on which you relied for his	A. Yes, I believe on or about January
9	testimony that the total amount of cash and	2009, the allocation report was rerun and the
10	securities in the reserve account as of 9/19	adjustments were made to it.
11	was roughly 1.769 billion; is that correct?	Q. But your basis for that statement,
12	MR. OXFORD: Yes, we will undertake to	that it was rerun in January, is not this
13	do that.	memorandum, is it?
14	MS. NEUHARDT: And that you would do	A. This is the memorandum I believe to
15	the same for Mr. McIsaac's testimony that	Broadridge pointing out the issues and
16	the assets at Chase were seized on September	requesting I thought to be rerun.
17	19, 2008?	Q. But this does not state that Barclays
18	MR. OXFORD: Yes. Again, we'll	actually reran the calculation, does it?
19	undertake to review the reliance materials	A. I don't believe it does, no.
20	that were produced to you.	Q. Okay.
21	BY MS. NEUHARDT:	MR. OXFORD: Amy, not to interrupt,
22	Q. Do you still have your report opened	but it occurs to me that there was a
23	to Exhibit 28, which we were just discussing?	document I marked at Mr. Vinella's
24	A. I found it very quick.	deposition that might be the one your
25	Q. Is it your testimony that this is	looking for.
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1	D. McIsaac	D. McIsaac
2	MS. NEUHARDT: We can talk about that	version of this document?
3	off the record, but that's --	A. I believe I did. I believe it had the
4	MR. OXFORD: Okay.	names of the customers in there.
5	MS. NEUHARDT: If he -- are you saying	MS. NEUHARDT: We would like that
6	that he relied on that document?	document, Neil.
7	MR. OXFORD: That may be the document	MR. OXFORD: I'll take your request
8	he relied upon. I don't have it with me	under advisement.
9	today, but -- but I'm happy to review it and	Q. And from this document you believe you
10	let you know if that was what he relied	were able to determine that these were customer
11	upon.	assets?
12	Q. Okay. And then you also referred to	A. These are the account numbers for the
13	Exhibit 2 to your original -- no, I'm sorry,	customers and they showed the ranges of where
14	your rebuttal?	the accounts were in the customer range.
15	A. Rebuttal.	Q. Can you show me what on here is
16	Q. Yes. And can you tell me what Exhibit	telling you that?
17	2 is?	A. The redacted portion doesn't have the
18	A. Exhibit 2 is a schedule of all the FID	account numbers.
19	accounts and the assets in their accounts on	Q. The redacted portions.
20	9/19, and these were the assets that were at	We definitely need the unredacted
21	Chase.	version.
22	Q. And from whom did you receive this?	Did you do any research to confirm
23	A. From the financial advisors of the	that there were no subordination agreements
24	Trustee.	associated with these accounts?
25	Q. And did you rely upon a non-redacted	A. These accounts were all listed as

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<p>1 D. McIsaac  2 customers. So, no, I did not do any  3 subordination -- review to see if any customers  4 in the FID subordinated their accounts to the  5 Trustee. But if they did, then I don't know why  6 they would be locked up in a separate account at  7 Chase to the benefit of customers.</p> <p>8 MS. NEUHARDT: Strike the last part of  9 his answer as nonresponsive. Okay.</p> <p>10 Q. I think we've followed up on  11 everything from the break. I would like to turn  12 to your discussion of -- in your rebuttal  13 report, it's paragraphs 19 through 21; in your  14 original report, it is paragraphs 39 and 40; and  15 you refer to it as "Assets Subject to LBI  16 Administration."</p> <p>17 What is your basis for stating that  18 the 439 million in assets that you have  19 identified are customers assets?</p> <p>20 A. These were assets in a box listed as  21 customer box, customer security -- customer no  22 lien account at LBIE for the benefit of LBI  23 customers.</p> <p>24 Q. Did you do any independent  25 investigation of that?</p>	<p>1 D. McIsaac  2 A. I reviewed the LBIE agreement that  3 said that they were holding account free of  4 lien.  5 Q. When say LBIE you're referring to  6 L-B-I-E, right?  7 A. Yes.  8 They give control location memos to  9 the SEC.  10 Q. Okay. Were you -- were you aware of a  11 general policy at LBI that they would include  12 LBIE customers assets -- I'm sorry, LBI customer  13 assets that were held by LBIE in their lockup  14 requirement calculation?  15 A. I don't understand the question. I'm  16 sorry.  17 Q. Okay. Well, do you know whether as a  18 matter of course LBI would in fact include in  19 its reserve calculation an adjustment for the  20 LBI customer assets that were held by LBIE?  21 A. I saw nothing in the calculations that  22 led me to believe that they were not -- that  23 they were not considered them in a good control  24 location and, therefore, putting a credit in the  25 reserve formula.</p>
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<p>1 D. McIsaac  2 Q. Did you ask -- did you speak to  3 anybody about this issue?  4 A. I did not speak to any Lehman or  5 Barclays employees.  6 Q. Okay. If in fact there was an  7 adjustment as a matter of course at LBI -- for  8 LBI customer assets held at LBIE, would that  9 change your opinion in any way?  10 MR. OXFORD: Objection to form.  11 A. If the 439 that I believe allocated to  12 a good control location and, therefore, was not  13 put into the formula, if somebody could show me  14 the adjustment putting that \$439 million into  15 the formula, I guess I would change my opinion,  16 but I'm not sure why they would get a good  17 control letter and then do that, but ...  18 Q. Your testimony is, though, that you  19 don't know one way or the other, correct?  20 A. I did not see anything to that.  21 Q. All right. Let's turn to your  22 discussion of the OCC deposit, which is in your  23 rebuttal report, paragraphs 24 and 25 on pages  24 11 and 12, and in your original report it is  25 paragraph 45 on page 17.</p>	<p>1 D. McIsaac  2 Now, is a broker-dealer able to  3 withdraw and transfer margin at the OCC without  4 funding the reserve account at the time of the  5 withdrawal?  6 A. Yes.  7 Q. Okay. Let's go, earlier today we  8 talked about the statement in paragraph 13 of  9 your rebuttal affidavit that the only relevant  10 point in time for the purpose of determining the  11 accuracy of LBI's reserve calculation is  12 September 19, 2008?  13 A. That's correct.  14 Q. Do you believe that that principle  15 applies to your opinion about the OCC deposit?  16 MR. OXFORD: Objection. Form.  17 A. I believe that opinion applies to it.  18 Q. Okay. Had the OCC margin deposit that  19 you refer to in your reports been withdrawn as  20 of September 19?  21 A. No, but in previous discussions  22 earlier this morning on my expert report, the  23 Barclays lawyers were assuming that the margin  24 was being transferred to LBI as of the 17th, so  25 if -- if to -- I'm sorry, to Barclays as of the</p>

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1	D. McIsaac	D. McIsaac
2	17th.	Q. Now, do you know whether the contract
3	If LBI had agreed to transfer that	had been approved by the court prior to -- well,
4	money, then I would assume that it was not a	you said the 17th. Do you know if that contract
5	good debit in the formula because it was	had been approved by the court as of the 17th?
6	impaired.	A. I don't know when the contract was
7	Q. Well, by that logic, as of the 17th,	approved. I believe it was sometime after the
8	hadn't LBI agreed to transfer, for example, all	fact, but if, as of the 17th, you agreed to sell
9	of its private investment management accounts to	it and gave up your rights to that deposit, then
10	Barclays as of a later date?	I don't know if that would be a good debit in
11	MR. OXFORD: Objection. Form.	the formula. And I'm just going by what
12	A. I believe they determined what they	everybody was saying, that the -- they agreed to
13	were going to transfer. Until you transfer the	sell the margin prior to that and that thought
14	customers' assets and the customer accounts,	process.
15	they're still included in the reserve formula	Q. Could you show me -- well, are you
16	until such time as you can transfer them.	basing your opinion on anything in Rule 15c3-3?
17	If you have impeded an asset, then I	A. I believe there are many parts of 3-3
18	don't think you could put it into the formula,	that would talk about unsecured receivables and
19	just as if I had a customer receivable that	how they would not go into the formula. This is
20	wasn't fully secured, I wouldn't put it in the	allowed in the formula because it's coming from
21	formula.	a clearing org. receivable. If you have given
22	So if this deposit was sold to	up your rights to that receivable, then I don't
23	somebody else prior to the 19th, then I think it	think you would include it in the formula.
24	probably doesn't belong in the formula as of the	Q. And is your position that LBI had
25	19th.	given up its rights as of the 17th prior to
	Page 312	Page 313
1	D. McIsaac	D. McIsaac
2	court approval?	for LBI for reserve formula purposes.
3	MR. OXFORD: Objection. Form.	They have given up their right to
4	Misstates the witness's testimony.	receive that asset. I don't think they can put
5	You can answer the question again.	a debit in there. The same as if I told a stock
6	A. No, my opinion is if it's determined	borrow counterparty don't give me your money
7	that that margin was sold prior to the 19th, or	back, I don't care. It wouldn't go in the
8	as of the 19th, then it does not belong as a	formula.
9	debit in the formula.	Q. If it were to turn out that the --
10	Q. Is your opinion that a contract that	they had not given up their rights until such
11	has not yet been closed nonetheless affects the	time as the court approved of the contract,
12	15c3-3 calculation?	would that change your opinion?
13	A. My opinion is if you tell me you have	MR. OXFORD: Objection. Form.
14	impeded that asset and you -- you have	A. I don't know what the date would be
15	effectively given up your right to that asset, I	that they agreed to the contract. I -- this --
16	would say that asset's not a good asset in the	I think this will be going in front of the court
17	formula. And that's all I'm saying. I'm not --	eventually and the court will decide whether or
18	I don't know when the contract was sold.	not the contract stays -- states that that was
19	I'm being told, and people are	being sold as at that point in time.
20	negotiating that -- and I think this would be	If that's the point in time I believe
21	decided by the court eventually -- that the	the contract was effective or signed
22	agreement sold the margin to Barclays as of the	theoretically agreed to as of the 19th, I don't
23	17th if that's the date of the agreement and	know if it matters when it's signed. If I have
24	that's when that account -- that's when that	agreed to impede an asset at any point in time,
25	asset stopped becoming I believe a good asset	it doesn't matter when I sign it. I think I

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<p>1 D. McIsaac  2 would not include that debit in the reserve  3 formula.</p> <p>4 Q. So even if a court were to determine  5 that the contract was not effective until it  6 were approved, it's nonetheless your opinion  7 that the asset would be impeded as of the time  8 they signed?</p> <p>9 A. As of the time that somebody agreed  10 that that asset was not an asset of theirs, that  11 they have sold -- they have given that asset  12 away, they sold that asset, I can't see how that  13 asset would be good for the -- as a debit in the  14 reserve formula.</p> <p>15 Q. Do you believe LBIE -- sorry, LBI  16 continued to be able to withdraw from that OCC  17 account after the 17th?</p> <p>18 A. I believe there were some restrictions  19 at the OCC on the 19th that they could not  20 withdraw moneys out of there on the 19th.</p> <p>21 Q. The restrictions were imposed by the  22 OCC, correct?</p> <p>23 A. Yes, they were.</p> <p>24 Q. They were not imposed by Barclays?</p> <p>25 A. I don't think Barclays imposed them,</p>	<p>1 D. McIsaac  2 no.</p> <p>3 Q. So it's not the contract that was  4 preventing them from withdrawing assets after  5 the 17th?</p> <p>6 A. As I stated earlier today, you weren't  7 here, that I would have anticipated the purchase  8 agreement to have some indication that they were  9 selling margin and at that point in time to talk  10 about the amount of margin that was being sold.</p> <p>11 But once you've given up that right,  12 whether it be 500 million for a billion, I don't  13 think you can put it in the formula anymore.</p> <p>14 Q. But they could withdraw it from the  15 OCC account?</p> <p>16 A. And if it wasn't in the OCC account,  17 it wouldn't be a debit in the formula either.</p> <p>18 Q. I understand, but I'm trying to  19 understand. Essentially you're saying that the  20 asset was impaired as of the date the contract  21 was signed; is that correct?</p> <p>22 A. I'm saying if the -- if the court  23 determines that that is what happened on the --  24 as of the Asset Purchase Agreement and that the  25 margin was being sold by Lehman to Barclays,</p>
Page 316	Page 317
<p>1 D. McIsaac  2 that that debit should not be in the formula  3 because they have given up their right to  4 receive that debit and it is no longer there for  5 the protection of customers.</p> <p>6 Q. Yet you're also saying they  7 nonetheless had the right to withdraw those  8 funds prior to the -- or after the 17th from the  9 OCC?</p> <p>10 A. And had they withdrawn those funds,  11 they wouldn't be in the formula.</p> <p>12 Q. But they wouldn't be in the formula  13 for a different reason, correct? Because they  14 had been withdrawn?</p> <p>15 A. That's right, and I don't --</p> <p>16 Q. And not because --</p> <p>17 A. And I don't know if the agreement -- I  18 didn't see anything in the agreement stipulated  19 that the amount that was there as of the 17th is  20 what was being sold, if the amount was there at  21 the end of the day is what was being sold or if  22 anything was being sold.</p> <p>23 If, if it's determined that that \$507  24 million was being sold and that it was impaired  25 by the 19th by the thought process of selling</p>	<p>1 D. McIsaac  2 it, I don't think the debit should have been in  3 the formula.</p> <p>4 Q. And yet you nonetheless believe that  5 if they also contracted to transfer tens of  6 thousands of customer accounts in that same  7 contract, that that transfer of customer  8 accounts should not be included in the 15c3-3  9 calculation?</p> <p>10 MR. OXFORD: Objection.</p> <p>11 A. No, I said the --</p> <p>12 MR. OXFORD: Objection to form.</p> <p>13 A. The customer accounts should be  14 included in the calculation until such time as  15 they're transferred. If you're putting a debit  16 in the formula, effectively reducing your lockup  17 requirement because you have a good asset,  18 that's what I'm saying, if that was impeded, I  19 don't believe there should have been a debit in  20 the formula.</p> <p>21 Q. If there's no adjustment to the debit  22 after withdrawal, why is an adjustment by an  23 agreement to withdraw on a later date required?</p> <p>24 A. As far as I'm concerned, the agreement  25 should have stipulated if there was an asset to</p>

<p style="text-align: right;">Page 318</p> <p>1                   D. McIsaac</p> <p>2 be sold, what amount was to be sold, or what</p> <p>3 amount at what point in time should have been</p> <p>4 sold.</p> <p>5                   What I am saying if, if in fact the</p> <p>6 court determines that that was a valid</p> <p>7 transaction and that LBI gave up its rights to</p> <p>8 this debit, that it should not have been in the</p> <p>9 formula as of the 19th.</p> <p>10          Q. And do you know whether the contract</p> <p>11 stipulated an amount to be sold or at what point</p> <p>12 in time to determine the amount to be sold?</p> <p>13          A. No, I did not.</p> <p>14          Q. So if in fact the amount was not</p> <p>15 limited to \$507 million or the date as of which</p> <p>16 the transfer would be made was later than 9/19,</p> <p>17 does your opinion change in any way?</p> <p>18          MR. OXFORD: Objection.</p> <p>19          A. If at any point --</p> <p>20          MR. OXFORD: Objection to the form.</p> <p>21          A. Sorry.</p> <p>22          If at any point in time that was</p> <p>23 determined that they had given up their rights</p> <p>24 to that asset, any calculation done from that</p> <p>25 point in time I do not believe should have</p>	<p style="text-align: right;">Page 319</p> <p>1                   D. McIsaac</p> <p>2 included that asset as a debit in the formula.</p> <p>3                   Q. Can you show me where in the either</p> <p>4 FINRA or SEC Rule 15c3-3 it requires an</p> <p>5 adjustment prior to the delivery of the assets</p> <p>6 to another party.</p> <p>7                   A. I don't believe there's anything in</p> <p>8 3-3 that talks to this. This is my opinion that</p> <p>9 if you put a debit in the formula, it needs to</p> <p>10 be realizable. It has to be secured. The</p> <p>11 security for this would be that it's at the OCC</p> <p>12 and they will return it to you when not needed.</p> <p>13          Q. Okay. So you do not believe there's</p> <p>14 anything in 3-3 that would require that?</p> <p>15          A. I don't think there's anything in 3-3</p> <p>16 that talks to an OCC deposit being sold</p> <p>17 during -- prior to a calculation being finalized</p> <p>18 and how it should be accounted for in the</p> <p>19 formula.</p> <p>20          Q. Okay. Is there anything in the FINRA</p> <p>21 interpretations of 3-3 that would cover this</p> <p>22 issue?</p> <p>23          A. There's nothing that will cover this</p> <p>24 issue. There are -- there are issues within 3-3</p> <p>25 and I will gladly dig them out eventually, we</p>
<p style="text-align: right;">Page 320</p> <p>1                   D. McIsaac</p> <p>2 don't have time now, to show you that debits</p> <p>3 have to be secured. I can't put a debit in for</p> <p>4 a stock borrow if it's not secured. I can't put</p> <p>5 any amount in that's not secured.</p> <p>6                  Q. Have you heard of a Transfer and</p> <p>7 Assumption Agreement, TAA?</p> <p>8          A. Yes.</p> <p>9                  Q. Let me go back. Until such time as</p> <p>10 the account would have actually been transferred</p> <p>11 to Barclays, wouldn't OCC still owe margin to</p> <p>12 LBIE -- to LBI? My apologies.</p> <p>13          A. LBI would have been the -- the</p> <p>14 clearing firm at the OCC. If at any point in</p> <p>15 time I've given up my rights to that, all I'm</p> <p>16 saying is I don't think it's a good debit in the</p> <p>17 formula. Whether or not OCC would give it back</p> <p>18 to us or not, or give it back to LBI or not, at</p> <p>19 any point in time when that sale was</p> <p>20 consummated, they wouldn't get it back.</p> <p>21          So putting a debit in the formula,</p> <p>22 knowing that you cannot collect it, I think is</p> <p>23 not in compliance with the rules.</p> <p>24          Q. And yet you acknowledge that LBI could</p> <p>25 have withdrawn that money after the 17th from</p>	<p style="text-align: right;">Page 321</p> <p>1                   D. McIsaac</p> <p>2 the OCC account?</p> <p>3          A. I --</p> <p>4                  MR. OXFORD: Objection. Form.</p> <p>5          A. Yes, I acknowledge they could have</p> <p>6 done that.</p> <p>7          Q. Then how is that money less secured?</p> <p>8          A. Because as of the 19th -- you have one</p> <p>9 agreement that you're telling me that they --</p> <p>10 that they get the margin, and all I'm saying is</p> <p>11 if Barclays believes that that agreement means</p> <p>12 that they get the margin and the judge says,</p> <p>13 yes, that was a binding agreement at that point</p> <p>14 in time and they get the margin, all I'm saying</p> <p>15 is that then that debit was impeded and I can't</p> <p>16 believe that you would put a debit in the</p> <p>17 formula that is impeded. And that's all. If</p> <p>18 you don't have -- if you cannot have the right</p> <p>19 to collect it, you shouldn't put the debit in</p> <p>20 there.</p> <p>21          Q. I believe I had asked if you were</p> <p>22 familiar, if you had heard of the TAA?</p> <p>23          A. Yes.</p> <p>24          Q. Okay. Now, were you shown that</p> <p>25 earlier today?</p>

Page 322	Page 323
1 D. McIsaac	1 D. McIsaac
2 A. Yes, I was.	2 be signed to transfer it over effectively on the
3 Q. Do you recall whether or not that	3 morning of the 22nd to Barclays.
4 agreement was signed before or after September	4 Again, that TAA is not a contract.
5 19?	5 That TAA I believe is an agreement between
6 A. I believe it was signed on -- either	6 Barclays, Lehman, and the OCC to transfer
7 by some people on the 20th and some people	7 Lehman's contract and in the Lehman name to
8 possibly on the 22nd.	8 Barclays. It's not the sale agreement for
9 Q. If the court were to hold that it was	9 determining when that agreement was done or
10 the TAA -- if the court were to hold that it was	10 signed. It's a vehicle used to transfer -- for
11 the TAA that effected Barclays' right to the	11 the OCC to transfer the account name from Lehman
12 margin deposits, would it still be your opinion	12 to Barclays.
13 that the calculation as of the 19th should have	13 Q. That entire answer was nonresponsive.
14 been adjusted?	14 I move to strike it.
15 MR. OXFORD: Object to the form.	15 Please answer my question, which is
16 Assumes facts not in evidence.	16 that if the court were to hold that it was the
17 MS. NEUHARDT: I believe as an expert	17 TAA that effected Barclays' right to the margin
18 I'm entitled to ask him hypotheticals.	18 deposits, would it still be your opinion that
19 THE WITNESS: Is it okay to answer?	19 the calculation as of the 19th should have been
20 MR. OXFORD: You can answer.	20 adjusted?
21 A. I understand it might not have been	21 A. I would have to determine or review
22 signed at a point in time. I believe the OCC	22 what the court's reasoning why the TAA was the,
23 was looking for it to be signed as of the 19th.	23 in fact, the agreement between LBI and Barclays
24 There was all kinds of e-mails that I was shown	24 that sold that asset. Just -- I don't -- it's a
25 before stating that they were looking for it to	25 hypothetical and I don't know. I don't consider
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1 D. McIsaac	1 D. McIsaac
2 that a sale agreement.	2 business day, by the morning of the next
3 Q. If the court held that that was the	3 business day, which effectively, to me, it was
4 agreement that impaired the asset, and it was	4 done as of the close of business the 19th.
5 not signed until the 20th or perhaps the 22nd,	5 Q. So you're saying that even though --
6 would it change your opinion that the	6 even if an agreement is reached after the close
7 calculation --	7 of business, it would affect the calculation of
8 A. No, it would not.	8 that day rather than the calculation of the next
9 Q. Let me finish my question.	9 business day?
10 -- that the calculation as of the 19th	10 MR. OXFORD: Objection. Form.
11 should have been adjusted?	11 A. I believe that if you've sold the
12 A. No, it would not.	12 asset prior to you needing to make your lockup,
13 Q. And why?	13 the requirement, and you have impeded that asset
14 A. Because it was negotiated, started	14 in any way, shape or form, that you should not
15 negotiating it on the 19th, and I don't think	15 include it in the formula.
16 you should put an asset -- a debit in the	16 If that asset -- if that agreement, if
17 formula that you have impeded, whether or not	17 the court finds that that agreement is what sold
18 you do it on Saturday or Sunday.	18 the asset and that was signed as of the 21st or
19 Q. So it is your testimony that the mere	19 22nd, it was signed before the opening of
20 start of negotiations impairs the asset?	20 business the next day, so as effectively on the
21 A. That it is impaired because prior to	21 19th they would not have had a receivable.
22 the next business day, I don't have that, I'm	22 Q. Well, perhaps I misunderstand your
23 not allowed to have that asset anymore.	23 earlier testimony, but I thought you said that
24 Q. Because you started the negotiations?	24 the calculation would be done on Friday, the
25 A. Because it was finalized by the next	25 19th, and in the ordinary course of business,

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1 D. McIsaac 2 this would be done every Friday? 3 A. Uh-huh. 4 Q. So how would an event that happened 5 after the calculation have to be retroactively 6 included in the prior calculation? 7 A. Because I'm only saying -- because 8 it's being done and agreed to prior to the time 9 that the calculation is finalized that it should 10 be -- should be reviewed in that respect. 11 Q. What portion of SEC Rule 15c3-3 are 12 you relying on for that opinion? 13 A. SEC Rule 3-3 talks about secured 14 assets, and you cannot put a customer debit in 15 the formula unless it's fully secured. 16 Q. I just want to make very clear that it 17 is your position that a contract that was only 18 being negotiated prior to the close of business 19 on Friday, nonetheless if it reached agreement 20 prior to the opening of business the next 21 business day, it should -- it would result in a 22 retroactive recalculation of the requirement -- 23 of the calculation done on Friday? 24 MR. OXFORD: Is that -- that's a 25 statement, Amy. Do you have a question?	1 D. McIsaac 2 Q. Sorry. I did put the "it" before the 3 "is." 4 Is it your position that a contract 5 that is only being negotiated prior to the close 6 of business on Friday but that is closed prior 7 to the opening of business on Monday would 8 require a retroactive recalculation of the 9 calculation done Friday? 10 A. My opinion is that I don't believe the 11 TAA is -- is the contract. 12 Q. I'm not asking you whether or not the 13 TAA is the contract. I'm asking you whether or 14 not -- 15 A. I'm trying to finish my thought. 16 MR. OXFORD: Amy, we're all trying to 17 get out of here. If you could let Mr. 18 McIsaac finish his answer -- 19 MS. NEUHARDT: I'm going to ask it 20 again because he's clearly not answering the 21 question. 22 MR. OXFORD: Well, it's very hard for 23 you to reach that conclusion if you don't 24 let him finish his answer. 25 Q. But if you're going to tell me that
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1 D. McIsaac 2 the TAA is not the contract, I'll ask it again. 3 A. I believe that the TAA impedes the 4 asset as of the 19th. 5 Q. Please show me what portion of 15c3-3 6 justifies that conclusion. 7 A. I -- I don't believe you'll find 8 anything in 3-3 that will say that, but I 9 believe that the asset is impeded as of the 19th 10 if you have agreed to sell it and not receive 11 any money back in return for it that you can put 12 into the customer debit, and that's all I'm 13 saying. 14 Q. Is there anything in FINRA that 15 supports that? 16 A. I don't believe there's anything other 17 than talking about secured assets. 18 Q. Let's move on to what was in your 19 original affidavit as paragraphs 46 to 49 and 20 you refer to as customer property seizure during 21 the transfer process. 22 A. Uh-huh. 23 Q. Now, as I understand your opinion in 24 your original affidavit, your basis for 25 identifying this 82 million was that LBI's RISC	1 D. McIsaac 2 system did not feed into LBI's Rule 15c3-3 3 calculation; is that correct? And I'm looking 4 at paragraph 47. 5 MR. OXFORD: Object to the form. 6 A. Yes, I think I say here that the RISC 7 system doesn't automatically feed the 3-3 8 calculation. 9 Q. Have you since learned that that is 10 incorrect? 11 A. No, I've been told and informed that 12 the RISC system is reviewed by personnel who 13 supply the preparers the debit and credit 14 balances for customer accounts to be included in 15 the formula. 16 Q. Who did you speak to that informed you 17 of that? 18 A. The Trustee's financial advisors. 19 Q. Is that Deloitte? 20 A. Yes, it is. 21 Q. Did you speak to anyone who had been 22 an LBI employee to confirm that to be true? 23 A. No, I have not. 24 Q. Did you ever speak to Peter Tennyson? 25 A. No.

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<p>1 D. McIsaac</p> <p>2 Q. While she gets this document, in your</p> <p>3 rebuttal affidavit, paragraphs 22 to 23, you</p> <p>4 discuss the same issue. You do not mention the</p> <p>5 RISC system as a basis for your report in the</p> <p>6 rebuttal affidavit.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Why is that?</p> <p>9 A. I think we tried to further clarify</p> <p>10 that these were moneys that were -- the accounts</p> <p>11 were debited as if the customers were paid. The</p> <p>12 customers were never paid, so an adjustment had</p> <p>13 to be made to -- to, in the normal course of</p> <p>14 business, you reconcile your bank accounts, you</p> <p>15 look at items that you thought were paid that</p> <p>16 weren't paid, and you would make the adjustments</p> <p>17 for those.</p> <p>18 These moneys were never paid to the</p> <p>19 customers so you effectively still have a</p> <p>20 payable to the customer.</p> <p>21 Q. Okay. And now, what is your basis for</p> <p>22 saying these moneys were never paid to the --</p> <p>23 paid to the customers?</p> <p>24 A. What I have seen is that the debits,</p> <p>25 they debited their accounts, and there was no</p>	<p>1 D. McIsaac</p> <p>2 adjustment coming from the RISC system that I</p> <p>3 was shown adjusting for this \$82 million.</p> <p>4 Q. Do you have any other basis for saying</p> <p>5 the moneys were never paid out?</p> <p>6 A. No, that is it. I think the customers</p> <p>7 actually made claims, possibly to the estate,</p> <p>8 that they weren't paid their moneys.</p> <p>9 Q. If it turns out that the RISC system</p> <p>10 did in fact feed into the 15c3-3 calculation,</p> <p>11 would that change your opinion in any way?</p> <p>12 A. Not if these amounts were not included</p> <p>13 as payables to the customers at that point in</p> <p>14 time.</p> <p>15 Q. Did you do any investigation of</p> <p>16 whether or not items within the RISC system</p> <p>17 would or would not have been fed into the 15c3-3</p> <p>18 calculation?</p> <p>19 A. I was informed that the debits and</p> <p>20 credits to be included in the reserve formula</p> <p>21 off of the RISC system were provided by</p> <p>22 personnel responsible for the RISC system</p> <p>23 independent of anything else.</p> <p>24 Q. Okay.</p> <p>25 A. They provided the adjustments to the</p>
Page 332	Page 333
<p>1 D. McIsaac</p> <p>2 formula for that day.</p> <p>3 Q. And this was Deloitte that informed</p> <p>4 you of that?</p> <p>5 A. Yes.</p> <p>6 Q. We may have to come back to that when</p> <p>7 she comes back.</p> <p>8 Okay. Now, your original affidavit</p> <p>9 discusses a proposed adjustment of 2.3 billion</p> <p>10 allegedly owed to LBIE's customers, correct?</p> <p>11 A. Uh-huh.</p> <p>12 Q. You do not discuss that in your</p> <p>13 rebuttal report, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. Why is that?</p> <p>16 A. I believe the Trustee's advisor -- the</p> <p>17 Trustee has removed that and put that as under</p> <p>18 investigation until such time as it can be</p> <p>19 concluded whether or not it is a viable</p> <p>20 liability to the customers.</p> <p>21 Q. Okay. Do you continue to have an</p> <p>22 opinion on whether or not the adjustment is</p> <p>23 necessary?</p> <p>24 A. If it's determined that there is a</p> <p>25 liability to the omnibus customer account, yes,</p>	<p>1 D. McIsaac</p> <p>2 it should then go in the formula. It was in the</p> <p>3 records at that point in time as a payable and</p> <p>4 was removed from the formula.</p> <p>5 Q. Okay. But you do not know as of today</p> <p>6 whether or not there was in fact a liability to</p> <p>7 the omnibus customer account?</p> <p>8 A. No, that's why it's still under</p> <p>9 investigation.</p> <p>10 Q. Did you believe that it was not still</p> <p>11 under investigation at the time of your October</p> <p>12 5 affidavit?</p> <p>13 A. I believe we -- I'll have to look at</p> <p>14 my affidavit, but I believe we sort of alluded</p> <p>15 to the fact that it's still being investigated,</p> <p>16 and if such time it was found not to be true, we</p> <p>17 wouldn't require it, but I'll have to look.</p> <p>18 If you look at item -- at paragraph</p> <p>19 44, I basically say I was not able to see any</p> <p>20 documents to make this adjustment, and until</p> <p>21 such time as we saw it, that it should be held</p> <p>22 until we can determine if it should actually be</p> <p>23 owed.</p> <p>24 Q. Well, your October 5 report appears to</p> <p>25 be divided into, starting on page 13, items --</p>

<p>1 D. McIsaac</p> <p>2 you phrase it as items omitted or incorrectly</p> <p>3 reported in the reserve formula, and that goes</p> <p>4 through the top of page 19, and then on 19,</p> <p>5 number 2, is items currently under</p> <p>6 investigation, and then you list a number of</p> <p>7 other items?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Why did you put the 2.3 billion in</p> <p>10 your first category of items discussed in your</p> <p>11 original affidavit as opposed to the category of</p> <p>12 items under investigation?</p> <p>13 A. Because at this point in time we had</p> <p>14 shown -- been shown no documents that would</p> <p>15 prove that this credit should be -- should come</p> <p>16 out. Subsequent to that, I believe the Trustee</p> <p>17 has had some discussions with people and have</p> <p>18 decided to remove it until such time as I've</p> <p>19 seen those documents. I'm just not putting it</p> <p>20 in my affidavit until I can see something that</p> <p>21 proves it or that the claim is -- the claim as I</p> <p>22 believe is still out there from LBIE and until</p> <p>23 such time as it can be proven incorrect.</p> <p>24 Q. So in October when you did your</p> <p>25 initial affidavit, you assumed as true what the</p>	<p>1 D. McIsaac</p> <p>2 Trustee gave you?</p> <p>3 A. I saw the -- the credit coming out of</p> <p>4 the formula, an adjustment to the formula for</p> <p>5 the \$2.3 billion. There was no support for that</p> <p>6 credit coming out of the formula.</p> <p>7 Subsequent to that, I believe the</p> <p>8 Trustee and his advisors may have additional</p> <p>9 information that they are investigating and they</p> <p>10 decided to take it out of their motion.</p> <p>11 Q. In October did you investigate whether</p> <p>12 or not the amount at issue was related to an</p> <p>13 LBIE customer account or proprietary account?</p> <p>14 A. It was sitting in the LBIE omnibus</p> <p>15 customer account as a payable.</p> <p>16 Q. If it was in the customer account, did</p> <p>17 you investigate whether or not the obligation of</p> <p>18 the customer had been satisfied prior to LBIE</p> <p>19 filing for administration?</p> <p>20 A. There was an -- I don't know if that</p> <p>21 has anything to do with it. What does LBIE --</p> <p>22 this is owed to LBIE for its customers.</p> <p>23 Q. All right. Then if it was a customer</p> <p>24 account, did you investigate whether or not the</p> <p>25 obligation to the customer was satisfied prior</p>
<p>Page 336</p>	<p>Page 337</p>

<p style="text-align: right;">Page 338</p> <p>1 D. McIsaac    2 estate will eventually have to pay out?    3 A. No, I have not seen that number at    4 this point in time.    5 MS. NEUHARDT: Okay. Let's take a    6 five-minute break. I may be through.    7 THE VIDEOGRAPHER: The time is 7:09.    8 We are going off the record.    9 (Recess.)    10 THE VIDEOGRAPHER: The time is 7:19.    11 We're back on the record.    12 BY MS. NEUHARDT:    13 Q. Mr. McIsaac, right before we broke,    14 you informed me that you have not conducted any    15 further investigation relating to the items    16 listed in Section 2 of your original affidavit    17 as items currently under investigation?    18 A. That's correct.    19 Q. Have you been informed of any progress    20 or findings of the financial advisors relating    21 to those items under consideration?    22 A. I believe in my rebuttal report I make    23 a statement to the fact that they have to date    24 have found nothing else that would impact the    25 formula.</p>	<p style="text-align: right;">Page 339</p> <p>1 D. McIsaac    2 Q. And do you know -- did they inform you    3 whether or not they have completed their    4 investigation as to any of those matters?    5 A. I don't believe they have finished it.    6 Q. Okay. And we discussed earlier that    7 if a calculation is done on a Friday in the    8 ordinary course of business and an additional    9 deposit is required, that deposit would be done    10 the following Tuesday at 10 A.M.; is that    11 correct?    12 A. By the following Tuesday at 10 A.M.    13 Q. No later?    14 A. Yes.    15 Q. Okay. In that situation, is a    16 broker-dealer in violation of SEC rules at any    17 time prior to 10 A.M. on the following Tuesday?    18 A. In violation of SEC rules regarding    19 what? They could be --    20 Q. Are they in violation of any aspect of    21 SEC Rule 15c3-3?    22 A. As it pertains to that deposit, no.    23 There could be other reasons that they're in    24 violation of rules.    25 Q. But as it pertains to that deposit,</p>
<p style="text-align: right;">Page 340</p> <p>1 D. McIsaac    2 they would not be in violation as of that    3 Friday?    4 A. Correct.    5 Q. Okay.    6 MS. NEUHARDT: I have no further    7 questions. None from anybody else?    8 THE VIDEOGRAPHER: The time is 7:20.    9 This is the end of today's deposition.    10 We're going off the record.    11 oOo    12    13    14    15    16    17    18    19    20    21    22    23    24    25</p> <p style="text-align: center;">_____ DANIEL McISAAC    Subscribed and sworn to    before me this day    of 2010.    _____</p>	<p style="text-align: right;">Page 341</p> <p>1    2 CERTIFICATE    3 STATE OF NEW YORK )    4 : ss    5 COUNTY OF NEW YORK)    6 I, Kathy S. Klepfer, a Registered    7 Merit Reporter and Notary Public within and    8 for the State of New York, do hereby    9 certify:    10 That DANIEL McISAAC, the witness whose    11 deposition is herein before set forth, was    12 duly sworn by me and that such deposition is    13 a true record of the testimony given by such    14 witness.    15 I further certify that I am not    16 related to any of the parties to this action    17 by blood or marriage and that I am in no way    18 interested in the outcome of this matter.    19 I further certify that neither the    20 deponent nor a party requested a review of    21 the transcript pursuant to Federal Rule of    22 Civil Procedure 30(e) before the deposition    23 was completed.    24 In witness whereof, I have hereunto    25 set my hand this 7th day of April, 2010.    _____</p>

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